Delaware corporation, and each of them, and allege and aver the following:

[fol. 5]

I

Complainant, Oklahoma Gas and Electric Company, is a domestic corporation organized under the laws of the State of Oklahoma, and was at all times hereinafter mentioned engaged in and duly authorized to engage in the gas and electric business as a public utility.

II

Complainant, Oklahoma Natural Gas Company, at the times hereinafter mentioned was a corporation engaged in and duly authorized to engage in the business of producing, conveying and selling natural gas as a public utility within the State of Oklahoma; that the said Oklahoma Natural Gas Company is a dissolved corporation; that W. T. Phillips, Jr., H. J. Crawford, J. V. Ritts, Leonard C. Ritts, R. W. Hannan, A. W. Leonard and R. C. Sharp are the Directors of the Oklahoma Natural Gas Company duly authorized by law to sue or to be sued in winding up the affairs of the said Oklahoma Natural Gas Company.

Complainant, Oklahoma Natural Gas Corporation, is a corporation organized under the laws of the State of Maryland and engaged in the business of the production, transportation and sale of natural gas as a public utility within the State of Oklahoma and is the successor in interest of the said Oklahoma Natural Gas Company.

The Corporation Commission of Oklahoma is, and was at all times hereinafter mentioned, an administrative body created by the Constitution of the State of Oklahoma, having its offices and headquarters and principal place of business in the City of Oklahoma City, Oklahoma County, State of Oklahoma, and within the jurisdiction of the District Court of the United States for the Western District of Oklahoma, and the defendants, Paul Walker, C. C. Childers and E. R. Hughes are, and at all times hereinafter mentioned were, the duly elected, qualified and acting members [fol. 6] of the Corporation Commission of the State of Oklahoma, with their headquarters in Oklahoma City, Oklahoma County, State of Oklahoma; and J. Berry King is, and was at all times hereinafter mentioned, the duly elected, qualified and acting Attorney General for the State of Okla-

homa, with his official headquarters in Oklahoma City, Oklahoma County, State of Oklahoma, and within the jurisdiction of the District Court of the United States for the Western District of Oklahoma, and under and by virtue of the laws of the State of Oklahoma is and was at all times hereinafter mentioned, the duly authorized, qualified and acting attorney for said Corporation Commission of the State of Oklahoma.

The defendant, Oklahoma Packing Company, formerly Wilson & Company, Inc. of Oklahoma, an Oklahoma corporation, is a corporation duly organized under the laws of the State of Oklahoma heretofore with its principal place of business in Oklahoma City in the County and State of Oklahoma, and at the times hereinafter mentioned was engaged in operating a packing plant for the production, sale and manufacture of meats, meat products, and such other incident and allied products as are usually manufactured and sold by the larger packing plants in the United States.

The defendant, Wilson & Company, Inc. of Oklahoma, a Delaware corporation, is a corporation duly organized under the laws of the State of Delaware, and on or about the 3rd day of December, 1931, there was transferred by said Wilson & Company, Inc. of Oklahoma, the Oklahoma corporation, to said Wilson & Company, Inc. of Oklahoma, the Delaware corporation, the packing business and plant and the assets and choses in action of said Wilson & Company, Inc. of Oklahoma, the Oklahoma corporation, and ever since said 3rd day of December, 1931, said Wilson & Company, Inc. of Oklahoma, the Delaware corporation, has been and is engaged in and is continuing and carrying on the business heretofore conducted and carried on by said Wilson & Company, Inc. of Oklahoma, the Oklahoma corporation, in said Oklahoma County, Oklahoma, and said Dela- [fol. 7] ware corporation is therefore the successor to the said Oklahoma corporation of the same name, and as such successor has only such rights as said Oklahoma corporation had, and can claim no greater or further rights than said Oklahoma corporation has or had.

That Wilson & Company, Inc. of Oklahoma, the Oklahoma corporation, has changed its name to Oklahoma Packing Company, but is the same corporation and hereinafter may be refefred to by either name.

III

Complainants allege that this is a suit in equity arising under and involving the construction and application of the Constitution and laws of the United States and that the amount in controversy, exclusive of interest and costs, exceeds the sum of $3,000.00.

IV

Complainants allege that under and by virtue of the laws of the State of Oklahoma, complainant, Oklahoma Gas and Electric Company, and complainant, Oklahoma Natural Gas Company, are public utilities and that under and by virtue of the laws of the State of Oklahoma the Corporation Commission of the State of Oklahoma is vested with the power and authority and is charged with the duty of regulating and controlling them as such public utilities in all matters relating to the performance of their public duties and the charges therefor, with power to fix rates, rules, charges and regulations to be observed by them and by all other public utilities of the same kind or character in the State of Oklahoma, and said Corporation Commission is vested with the power and authority to enforce its orders against them, and each of them, by imposing fines against them for the violation of any of its said orders.

[fol. 8] Complainants allege that on and prior to November 13, 1925, the Oklahoma Gas and Electric Company was the owner of a gas distribution system in the City of Oklahoma City and the vicinity thereof and was engaged in the business of selling natural gas for use as heat and fuel to domestic and industrial consumers, both within and without the city limits of Oklahoma City, which said gas was delivered by the said Oklahoma Gas and Electric Company, through its distribution system to its said consumers at or on the premises of said consumers at rates prescribed by the Corporation Commission of the State of Oklahoma. The said complainant, Oklahoma Gas and Electric Company, purchasing said gas from the Oklahoma Natural Gas Company at city gates or measuring stations outside of the city limits of said Oklahoma City, and paid the Oklahoma Natural Gas Company for said gas the rate or price fixed by the Corporation Commission of the State of Oklahoma. The gas so purchased from the Oklahoma Natural

Gas Company was either produced or purchased by the Oklahoma Natural Gas Company and transmitted through its lines within the State of Oklahoma to the vicinity of Oklahoma City where it was delivered to the Oklahoma Gas and Electric Company through meters at said city gates or measuring stations.

The manufacturing plant of the defendants, Wilson & Company, Inc., the Oklahoma corporation and the Delaware corporation, at all times hereinafter mentioned, was situated in Oklahoma County without the corporate limits of said city, but immediately adjacent thereto and within the city gates or measuring stations and on the distribution lines of the Oklahoma Gas and Electric Company. On the said 13th day of November, 1925, and for a long time prior thereto, Wilson & Company, Inc., the Oklahoma corporation, purchased gas from the Oklahoma Gas and Electric [fol. 9] Company at a rate of 68¢ for the first 100,000 cubic feet and 20¢ per thousand cubic feet for all in excess thereof where the consumption amounted to 15,000,000 cubic feet or more per month, which was the rate fixed by the Corporation Commission and charged all other consumers or purchasers of gas similarly situated.

Complainants further say that on the said 13th day of November, 1925, the defendant, Wilson & Company, Inc., the Oklahoma corporation, filed with the Corporation Commission of the State of Oklahoma its petition against the Oklahoma Gas and Electric Company and the Oklahoma Natural Gas Company praying that said Commission

"make such order with reference to the price of gas to be charged this plaintiff, the connections and meters to be installed, the supply lines to be laid, and the cost thereof and the furnishing of gas direct by the Oklahoma Natural Gas Company to the plaintiff, and for the assessment of such penalites as the facts may seem to warrant in the judgment of the Commission and for such other and further orders as the Commission may deem necessary and just in the premises."

A copy of which said petition is hereto attached and marked Exhibit "A" and made a part hereof.

In due time the cause came on for hearing before the Corporation Commission of the State of Oklahoma, and at the conclusion thereof the case was taken under advisement by

said Corporation Commission and thereafter on the 13th day of April, 1926, the Corporation Commission made its Findings of Fact, Opinion and Order requiring the Oklahoma Natural Gas Company to supply Wilson & Company, Inc., the Oklahoma corporation, with natural gas for its use as fuel at its packing plant at the rate of 35¢ per thousand for the first 100,000 cubic feet and 15¢ per thousand for each additional thousand cubic feet thereafter, provided that the rate should not apply to consumption of less than 15,000,000 cubic feet per month, said order being conditioned on Wilson & Company, Inc., the Oklahoma corporation, either taking over and purchasing the service line owned and operated by [fol. 10] the Oklahoma Gas and Electric Company or the laying and installing of its own service line with all measuring devices and facilities which may be necessary to be installed in rendering said service without expense to the Oklahoma Natural Gas Company. A copy of said Findings, Opinion and Order is hereto attached, marked Exhibit "B" and made a part hereof.

V

Complainants further say that within the time prescribed by law complainants, Oklahoma Gas and Electric Company and Oklahoma Natural Gas Company, took their separate appeals from said order of the Corporation Commission to the Supreme Court of the State of Oklahoma, where said cause was heard by the said court upon the record certified to it by the Corporation Commission; that the said Corporation Commission of Oklahoma, after the entering of its said order and after the filing of notice of appeal by complainants, entered its separate supersedeas orders suspending the operation of said order pending the determination of the appeal and conditioned upon the Oklahoma Gas and Electric Company and the Oklahoma Natural Gas Company, each respectively, executing supersedeas bonds, and that the said Oklahoma Gas and Electric Company executed supersedeas bonds in said cause aggregating the sum of $50,000.00; that after the taking of said appeal to the Supreme Court of Oklahoma, and on, to-wit, the 22nd day of September, 1927, the Supreme Court of Oklahoma entered its order substituting as parties appellant, W. T. Phillips, Jr., H. J. Crawford, J. V. Ritts, Leonard C. Ritts, R. W. Hannan, A. W. Leonard and R. C. Sharp, the directors of

the Oklahoma Natural Gas Company, a dissolved corporation, and Oklahoma Natural Gas Corporation, in lieu of Oklahoma Natural Gas Company; copy of which said order is hereto attached, marked Exhibit "C" and made a part hereof. That thereafter on the 29th day of April, 1930, the [fol. 11] said Supreme Court of Oklahoma rendered its written opinion and decision affirming the order of the Corporation Commission. Petitions for rehearing were duly filed in said Supreme Court, which were denied on the 27th day of May, 1930.

VI

Complainants further say that the order of the Corporation Commission requiring complainant, Oklahoma Natural Gas Company, to furnish gas directly to Wilson & Company, Inc., the Oklahoma corporation, was and is legislative, and, likewise, the order and decision of the Supreme Court of Oklahoma affirming the order of the Corporation Commission is administrative and legislative and therefore under the Constitution and laws of the United States these complainants have the right to sue in this court and have the decision of this court upon both the law and the facts affecting the validity of said order of the Corporation Commission as affirmed by the Supreme Court of Oklahoma.

VII

Complainants further say that the order of the Corporation Commission aforesaid is null and void in that it requires complainant, Oklahoma Natural Gas Company, against its will and over its objection to supply natural gas as a fuel directly to Wilson & Company, Inc., the Oklahoma corporation, when said complainant has never undertaken or professed to furnish gas to it, or to other industrial or other gas consumers similarly situated to said Wilson & Company, Inc., the Oklahoma corporation, and said order therefore constitutes an appropriation of private property for public use without just compensation and deprives the complainants of their property without due process of law, contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States; that said order is further null and void as to the complainant, Oklahoma Gas and Electric Company, for the reason that same purported

[fol. 12] under the heavy fines and penalties which may be visited upon said Oklahoma Natural Gas Company to require said Oklahoma Natural Gas Company to furnish such gas to said Wilson & Company, Inc., an Oklahoma corporation, in the place and stead of the same being furnished by said Oklahoma Gas and Electric Company; that the furnishing of such gas by Oklahoma Gas and Electric Company to said Wilson & Company, Inc., was profitable and remunerative to said Oklahoma Gas and Electric Company, and if said order of the Corporation Commission had been carried out from the time of the making thereof said Oklahoma Gas and Electric Company would have been deprived of so furnishing and continuing to furnish such gas to said Wilson & Company, Inc., subsequent to the making of said order, and would thereby, by reason of said void and invalid order, have been deprived of its property, property rights and remunerative business without due process of law, contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States.

That also prior to and at the time of the making of said order there was an oral contract existing between Oklahoma Gas and Electric Company and Oklahoma Natural Gas Company made four or five years prior thereto and extending so long as said Oklahoma Gas and Electric Company should operate its distribution system and purchase gas from said Oklahoma Natural Gas Company, providing that as to consumers of gas within the city gates or measuring stations so situated as said Wilson & Company, Inc., with reference to Oklahoma City, said city gates and the respective properties of Oklahoma Gas and Electric Company and Oklahoma Natural Gas Company, that such consumers would be supplied and furnished gas by the Oklahoma Gas and Electric Company and would not be furnished and supplied gas by the Oklahoma Natural Gas Company; [fol. 13] that therefore said purported order of the Corporation Commission is further illegal, invalid and void as impairing, or attempting to impair, the rights and obligations of and under said contract between said Oklahoma Gas and Electric Company and said Oklahoma Natural Gas Company, and the contract and contractual relations existing between the Oklahoma Gas and Electric Company and the said Wilson & Company, Inc., whereby gas was so being

sold and furnished to said Wilson & Company, Inc., by said Oklahoma Gas and Electric Company, all contrary to and in violation of the provisions of Section 10, Article I of the Constitution of the United States.

VIII

Complainants further allege that heretofore and, to-wit, on or about the 3rd day of December, 1931, said Wilson & Company, Inc. of Oklahoma, the Delaware corporation, commenced an action in the District Court of Oklahoma County, Oklahoma, against the complainant, Oklahoma Gas and Electric Company, and the Fidelity & Casualty Company of New York, a corporation, wherein plaintiff in that action seeks to enforce said order No. 3388 of the Corporation Commission of Oklahoma, and to collect a large sum of money from complainant, Oklahoma Gas and Electric Company, and the Fidelity & Casualty Company of New York as surety of said Oklahoma Gas and Electric Company; copy of said petition being hereto attached and marked Exhibit "D" as a part hereof; that the purported cause of action attempted to be set forth in said action in said state court arises out of and is based upon the alleged validity of said order of the Corporation Commission, and which said Wilson & Company, Inc., the Delaware corporation, by said action is attempting to enforce against complainant, Okla-
[fol. 14] homa Gas and Electric Company, and its surety as aforesaid.

That said Wilson & Company, Inc. of Oklahoma, the Delaware corporation, plaintiff in said cause so filed in the District Court of Oklahoma County, is but the successor or assignee and stands in the shoes of said Wilson & Company, Inc. of Oklahoma, the Oklahoma corporation, and as such has only such rights as said Wilson & Company, Inc., the Oklahoma corporation, had and can claim no greater or further rights than said Oklahoma corporation has or had.

That for the reasons hereinbefore set forth said order is invalid and unenforceable, and because thereof said Wilson & Company, Inc., the Delaware corporation, as well as the Oklahoma corporation of the same name, does not have, and could not have, any possible cause of action against said Oklahoma Gas and Electric Company and Fidelity & Casualty Company of New York; that the commencement

and prosecution of said action in said state court is an attempt on the part of the said Wilson & Company, Inc., the Delaware corporation, to enforce and make effective the said illegal and void order of the Corporation Commission of the State of Oklahoma and to obtain the same benefits and enjoyment therefrom and thereunder as if said order were valid and legal; that the commencement and prosecution of said action in said state court harasses and annoys complainants and was commenced, and is being prosecuted, for the purpose of harassing and annoying complainants and is an attempt on the part of said Wilson & Company, Inc., to obtain fruits and benefits under such illegal, invalid and void order of the same character, to the same extent, and of the same force and effect as if said order were in fact valid and legal.

That relief cannot be given to complainants herein in said action in said state court, for the reason that Wilson & Company, Inc., the Delaware corporation, is the only plaintiff therein and the Oklahoma Gas and Electric Company and said Fidelity & Casualty Company of New York are [fol. 15] the only defendants therein, and there are no other parties thereto, and complete relief cannot be given so as to restrain and enjoin said Corporation Commission and the Attorney General from attempting to enforce same and to subject the complainants herein, particularly complainants Oklahoma Natural Gas Company, the directors of said company named above, and the Oklahoma Natural Gas Corporation to the heavy fines and penalties for violation thereof; that complete relief can be given herein and said order of the Corporation Commission be declared invalid, void and unenforceable, and that the defendants herein be enjoined and restrained from attempting to enforce the same in any manner.

IX

Complainants further allege that unless restrained and enjoined, the said Corporation Commission will enforce said order against them, and that said Wilson & Company, Inc., the Delaware corporation, will proceed to vexatiously annoy and embarrass complainants, and that the enforcement of said order by said Corporation Commission, or the attempted enforcement thereof by said Wilson & Company, Inc., the Delaware corporation, will result in irreparable

loss and damage to the complainants and the taking of their property without full compensation and without due process of law, contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States.

Complainants further allege that a disobedience of said order by complainants will subject them to severe fines and penalties, and therefore adequate relief at law is not available to them, and that by reason and virtue of all the facts aforesaid and the penalty statutes of the State of Oklahoma and the right of the Corporation Commission to assess [fol. 16] fines and penalties under the laws of the State of Oklahoma for the violation of said order, these complainants will be deprived of their property without due process of law, and will be denied the equal protection of the laws.

Wherefore, complainants pray that the defendants, the Corporation Commission of the State of Oklahoma, Paul Walker, Chairman, C. C. Childers and E. R. Hughes, constituting said Corporation Commission of the State of Oklahoma, J. Berry King, Attorney General of the State of Oklahoma, Oklahoma Packing Company, formerly Wilson & Company, Inc. of Oklahoma, an Oklahoma corporation, Wilson & Company, Inc. of Oklahoma, a Delaware corporation, their assistants, agents, attorneys and employees, and all persons acting through or under them, be restrained and enjoined from enforcing or taking any steps to enforce the said order, and that said order be adjudged and decreed to be invalid, void and unenforceable.

Complainants further pray that this court set this cause for hearing on application for interlocutory injunction, and, in accordance with Title 28, Section 380 of the Judicial Code, convene a three Judge Court to hear and determine the application for interlocutory injunction, and that on said hearing the court issue its injunction preliminary to final hearing, and perpetual thereafter in order that said complainants may not suffer irreparable injury and damage as alleged herein, and that pending a hearing of the application for interlocutory injunction this court issue its temporary restraining order to the same effect.

That on said final hearing said preliminary injunction be made perpetual as aforesaid, and that said order of the [fol. 17] corporation Commission be declared invalid, void and unenforceable, and that complainants may have such

other, further and general relief as may be just, equitable, necessary or proper in the premises.

And your complainants will ever pray.

Oklahoma Gas and Electric Company, a Corporation; Oklahoma Natural Gas Company, a Corporation; W. T. Phillips, Jr., H. J. Crawford, J. V. Ritts, Leonard C. Ritts, R. W. Harman, A. W. Leonard and R. C. Sharp, Directors of the Oklahoma Natural Gas Company, a Dissolved Corporation; Oklahoma Natural Gas Corporation, Complainants, by Allen, Underwood & Canterbury; Rainey, Flynn, Green & Anderson; Ames, Cochran & Ames, Their Attorneys.

Duly sworn to by W. R. Emerson. Jurat omitted in printing.

[fol. 18]

EXHIBIT "A" TO BILL OF COMPLAINT

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 7052

WILSON AND COMPANY, Incorporated, of Oklahoma, a Corporation, Plaintiff,

vs.

THE OKLAHOMA NATURAL GAS COMPANY, a Corporation, and OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, Defendants.

Petition and Complaint—Filed Nov. 15, 1925.

Plaintiff for its petition and complaint, against the defendants, alleges and states:

I

That the plaintiff is now and was at the times hereinafter set forth a corporation duly incorporated under the laws of the State of Oklahoma, with its principal place of business at Oklahoma City, in the county and State of Oklahoma, and that it is now and was then engaged in operating

a packing plant for the production, sale and manufacture of meats, meat products, and such other incident and allied products as are usually manufactured and sold by the larger packing plants in the United States.

II

That the defendant, the Oklahoma Natural Gas Company, is now and was at the dates herein complained of, a corporation, duly incorporated under the laws of the State of Oklahoma, with its principal place of business in the City of Tulsa, Oklahoma, and that it is now and was at all of such times engaged in the production, purchase, sale and distribution for profit of natural gas in and throughout a large part of the State of Oklahoma, and that as incident to such business, it installed, layed, maintained and operated gas lines for the transportation of natural gas from the principal gas field of the State of Oklahoma, to and through various cities and counties of said state, including Oklahoma City, Oklahoma.

III

That the Oklahoma Gas and Electric Company is and was at the times hereinafter referred to, a corporation, duly incorporated under the laws of the State of Oklahoma, with its principal place of business at Oklahoma City, Oklahoma, and engaged in the purchase, sale and distribution for profit of natural gas.

IV

That the manufacturing plant of the plaintiff as above described is situate in Oklahoma County, Southwest of Oklahoma City, and is entirely without the corporate limits of said city. The exact location of plaintiff's plant being at a point a little North of East of the intersection of May Avenue and Ash Street. The said May Avenue being a North and South highway, and the said Ash Street, being an East and West highway. The exact location of said plant being about 150 yards north of Ash Street and about 350 yards east of May Avenue.

[fol. 19] That the defendant, the Oklahoma Natural Gas Company, owns and operates its main transmission line for natural gas leading from the Cement, the Duncan, the

Chickasha and other gas fields lying Southwest of Oklahoma City, upon a[illegible] along May Avenue to Oklahoma City, and also a branch line from said main line from the point of intersection of Ash Street and May Avenue East along Ash Street, to a point at and beyond the plaintiff's plant. Plaintiff is informed and believes that the main line on May Avenue is something like twelve inches in diameter and that the branch line along Ash Street is something like eight or ten inches in diameter. There is leading from a point on Ash Street almost due South of the plaintiff's boiler room, a smaller lead or service line of about 150 yards in length.

V

Plaintiff alleges upon information and belief that the defendant, Oklahoma Natural Gas Company, owns, operates and maintains the main line leading from the gas fields aforesaid North on May Avenue to Oklahoma City, and the branch line leading off from May Avenue and East on Ash Street and also the service or lead line from the Ash Street line into the boiler room of the plaintiff.

Plaintiff alleges that it is now and has been for some years past supplied with fuel gas from the lines and mains of the defendant Oklahoma Natural Gas Company as hereinbefore described and for said service the plaintiff has been paying and has been compelled to pay the sum of about 20 cents per thousand cubic feet of gas, but that the billing of said gas to this plaintiff has been done either by or at the instance of the Oklahoma Gas and Electric Company and the payments for all of such gas have been made by the plaintiff to the Oklahoma Gas and Electric Company.

Plaintiff alleges that the Oklahoma Natural Gas Company and the Oklahoma Gas and Electric Company seem to have some sort of arrangement among themselves that the bills for such gas shall be made out by and payments for said gas made to the Oklahoma Gas and Electric Company, but the nature and terms and conditions of this arrangement or agreement between said defendants is unknown to this plaintiff. But the plaintiff avers in this connection that the Oklahoma Gas and Electric Company performs no real or substantial service to or for this plaintiff. That there is no waste or gas between the mains of the Oklahoma Natural Gas Company at the point at which this

plaintiff takes over its supply of fuel. That there is no cost of distribution, for there is no distribution.

The plaintiff further alleges that if any point is made between defendants or either of them with reference to either the ownership or maintenance of repairs resulting from or incidental to the short supply line leading directly into plaintiff's boiler room, that this plaintiff avers that it is now ready, willing and able to install at its own proper cost and expense a new line leading from plaintiff's boiler room to the line of supply on Ash Street or if this court deem it necessary and proper that it will install at its own expense a new line from the said boiler room direct to May Avenue over the property of this plaintiff or over property with reference to which it has secured the right to lay said line, and that it will make such other expenditures with reference to measuring said fuel as to this court may seem just and proper in the premises.

[fol. 20] Plaintiff alleges further that the price which it is paying and is compelled to pay as above set forth for said fuel gas is exorbitant and unreasonable. It shows to the court that conditions have radically changed since the order providing for this rate went into effect. That large supplies of gas have been discovered and are available in various parts of this State and especially within the fields lying immediately Southwest of Oklahoma City there have been discovered perhaps the largest gas wells, gas fields and gas producing territories ever found in the State of Oklahoma. They are easily accessible to Oklahoma City and can be driven through the pipes and mains of the Oklahoma Natural Gas Company, already described herein, without any considerable extra cost and this plaintiff alleges that it is informed and believes that the Oklahoma Natural Gas Company either has control of, or contracts for the purchase of a large part of the gas from these said new territories last described.

That the plaintiff and other industrial users of gas use only the surplus and are always subject to be cut off in the event of extremely cold weather or when and if there should be a scarcity of gas to the intent and purpose that the domestic users of said fuel shall take precedence.

Plaintiff alleges that it is informed and believes that the Oklahoma Natural Gas Company is now and has been extending to industrial users of gas outside the limits of

Oklahoma City, prices and rates upon natural gas that are much less than those charged to this plaintiff and that the same have been highly discriminatory as against this plaintiff.

Plaintiff in consideration of the premises prays that the said defendants be cited and notified to answer the charges set out in this petition and complaint and that after due hearing that the Commission make such order with reference to the price of gas to be charged this plaintiff, the connections and meters to be installed, the supply lines to be laid, and the cost thereof and the furnishing of gas direct by the Oklahoma Natural Gas Company to this plaintiff, and for the assessment of such penalties as the facts may seem to warrant in the judgment of the Commission and for such other and further orders as the Commission may deem necessary and just in the premises.

The plaintiff here and now reserves to itself the right to proceed against the defendant or either of them in another proceeding for the refunding of such over-charges and overpayments as have heretofore been made by plaintiff to defendants or either of them.

Wilson & Company, Inc., of Oklahoma, by C. D. Bennett, Attorney for Complainant.

STATE OF OKLAHOMA,
County of Oklahoma, ss:

W. R. Grove, first being duly sworn says that Wilson and Company is a corporation, incorporated under the laws of the State of Oklahoma, and that he is an officer thereof, to-wit Vice-President; that he has read and knows the contents of the foregoing petition and complaint and that the same is true, except as to those things stated upon information and belief and as to those, he believes it to be true.

W. R. Grove.

Subscribed and sworn to before me this the 12th day of Nov., 1925. Annabel Wheeler, Notary Public. My commission expires July 31, 1928. (Seal.)

[fol. 21] EXHIBIT "B" TO BILL OF COMPLAINT

Before the Corporation Commission of the State of Oklahoma. Cause No. 7052. Order No. 3388.

WILSON & COMPANY, INC. OF OKLAHOMA, Plaintiff,

vs.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, and OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, Defendants

Findings of Fact, Opinion and Order

On November 13th, 1925, Wilson & Co., Inc., of Oklahoma, a corporation organized and existing under the laws of the State of Oklahoma with its principal place of business just outside of the city limits of Oklahoma City, Oklahoma, and southwest from the city of Oklahoma City, filed its petition and complaint in the above entitled cause, against the Oklahoma Natural Gas Company, a corporation, and the Oklahoma Gas & Electric Company, a corporation. It is alleged in said petition that applicant Wilson & Co., Inc. of Oklahoma, is now and has been for several years past engaged in the operation of a packing plant for the production, sale and manufacture of meat and meat products and such other incidental and allied products as are usually manufactured and sold by packing plants generally; that its plant is situated entirely without the corporate limits of Oklahoma City, as a point slightly north of east of the intersection of May Ave. and Ash Street, May Ave. being a north and south highway and Ash St. being an east and west highway, applicant's plant being located about 150 yards north of Ash St. and about 350 yards east of May Ave. and within an angle formed by the intersection of said streets or highways.

It is alleged that the Oklahoma Natural Gas Company is a corporation; that its principal place of business is at Tulsa, Oklahoma, and is engaged in the production, purchase, sale and distribution of natural gas in and throughout a large part of the State of Oklahoma; that as incident to such business it has installed, maintained and operated gas lines for the transmission of natural gas from the

principal gas fields of the State of Oklahoma, to and through various cities and counties of the State of Oklahoma, including Oklahoma City; that the Oklahoma Gas & Electric Company is a corporation with its principal place of business at Oklahoma City, Oklahoma, and is engaged in the purchase, sale and distribution of natural gas for profit; that the Oklahoma Natural Gas Company owns and operates its main transmission line for natural gas leading from the Cement, Duncan and Chickasha gas fields, southwest of Oklahoma City, upon and along May Ave. and that it also has a branch line leading from said main line at the point of intersection at Ash St. and May Ave. east along Ash St. to a point at and beyond applicant's plant; that the main transmission line along May Ave. is about 12 inches in diameter and that the branch line along Ash St. is about 8 or 10 inches in diameter, and that leading therefrom, at a point almost due south of applicant's boiler room, there is a small service line about 150 yards in length, leading to applicant's boiler room, from which it takes its gas, and that the Oklahoma Natural Gas Company operates and maintains both of these gas lines, the one running north and south along May Ave. and one running east and west along Ash St. from the point of intersection to the point where the service line leads away from the Ash St. line to applicant's boiler room.

It is alleged that applicant has been compelled and is now compelled to pay the sum of 20 cents per thousand cubic feet for natural gas delivered to its boiler room by the Oklahoma Gas & Electric Company, from and through the lines located and described above; that through some sort of arrangement between defendants, the terms of [fol. 22] which are unknown to applicant, the bills for such fuel have been made out by the Oklahoma Gas & Electric Company and that payments have been made to said Oklahoma Gas & Electric Company, but applicant alleges that the Oklahoma Gas & Electric Company has not performed any substantial service in connection with the delivery of said gas to applicant; that there is no waste between the mains of the Oklahoma Natural Gas Company and the boiler room, and that there is no cost of distribution for the reason that there is actually no distribution.

Applicant then alleges that if necessary, it stands ready and willing to install at its own proper cost and expense,

a gas line leading from applicant's boiler room to the line of supply on Ash St. or that if necessary it will install at its own expense a new line from the boiler room direct to May Ave. and that it will make such other expenditures for measuring devices, etc., as may seem just and proper in the premises in order to secure its supply of gas direct from the Oklahoma Natural Gas Company's lines.

It is then alleged that the price which applicant is paying for its gas under the arrangement described, is exorbitant and unreasonable and that conditions have so changed that the rate is unreasonable on account of the large supplies of gas which have been discovered and which are now available in the various parts of the State of Oklahoma, and particularly within the fields from which the Oklahoma Natural Gas Company secures its supply; that applicant only uses the surplus gas available over and above that quantity which is required for domestic consumption in the towns and cities served by defendants, and is subject to be cut off from its supply in event of extremely cold weather when all the gas is required or needed for domestic uses.

It is alleged that the Oklahoma Natural Gas Company is now and has been extending to patrons outside of Oklahoma City, prices and rates for natural gas supplied by it, which are much less than those which the applicant is compelled to pay and that by reason thereof such rates and charges which applicant is required to pay for the service rendered, is highly unfair and discriminatory.

The prayer of applicant is that the Corporation Commission investigate and inquire into the matters and things set forth in said petition and make such order with reference to the price which should be reasonably charged applicant and with respect to the connections, meters and other appliances which may be required to be installed, and that the Oklahoma Natural Gas Company be ordered to supply it under such terms and conditions as may seem necessary and just in the premises.

The matter was set down for hearing before the Commission for the 27th day of November, 1925, but it was continued until the 10th day of December at which time it was partially heard, and continued until the 18th day of December and was concluded on the 19th day of that month.

Wilson & Co., Inc., of Oklahoma, appeared through W. R. Grove and W. R. Garside, officers of said corporation, and by its attorney of record, C. D. Bennett. The Oklahoma Natural Gas Company appeared by its Vice-President, R. C. Sharp, and by its attorneys Ames, Lowe & Cochran, and the Oklahoma Gas & Electric Company appeared by its Vice-President, J. F. Owens and by its attorneys Rainey & Flynn.

The testimony of the various witnesses is devoted principally to the location of the lines of gas pipe lines in question on May Ave. and Ash St., the location of the city gate at which point the Oklahoma Natural delivers its supply of gas from its pipe line to the distributing system in Oklahoma City, and with respect to the relationship exist- [fol. 23] ing between the Oklahoma Natural Gas Company and the Oklahoma Gas & Electric Company in connection with the service to those patrons living just outside of the city limits of Oklahoma City but within what is known as the city gate, or the point at which the gas is measured to the Oklahoma Gas & Electric Company by the Oklahoma Natural Gas Company.

On or about June 23, 1921, this Commission promulgated Order No. 1886 in Cause No. 4023, whereby the contractual relationship heretofore existing between these two gas companies was dissolved, and a uniform gate rate for gas supplied to the various cities and towns served by the Oklahoma Natural Gas Company was established; the rate to be applicable to measurements of gas delivered at a point which was called in said order, the city gate. The order provided that distributing companies taking gas from the Oklahoma Natural Gas Company including both the independent companies and those owned by the Oklahoma Natural Gas Company itself, shall receive and accept gas from the Oklahoma Natural Gas Company at the borders or boundaries of each town and city and shall pay for the full amount of gas measured into the distributing system at the borders or boundaries of each town and city.

At the time of the promulgation of said order, it appears from the evidence that the Oklahoma Gas & Electric Company was serving a number of consumers of natural gas outside of the city limits of Oklahoma City, and it is disclosed from the evidence that its contract with the Oklahoma Natural Gas Company provided that it should have

the right to serve within five miles of the city limits. It also appears, however, that the Oklahoma Natural Gas Company owned and operated some gas property located within the city limits of the city of Oklahoma City. Shortly after the promulgation of the order establishing the gate rate, the two gas companies entered into an agreement by the terms of which the Oklahoma Natural Gas Company took over and agreed to serve patrons living outside the city limits and theretofore served by the Oklahoma Gas & Electric Company, and it is not disputed in the record that the Oklahoma Natural did actually take over other property and patrons so situated. However, in this arrangement, applicant Wilson & Co., Inc., of Oklahoma, was not taken over by the Oklahoma Natural Gas Company but has at all times, it appears, been served by the Oklahoma Gas & Electric Company, notwithstanding the plant is located at a point near the streets and highways traversed by one of the main lines of the Oklahoma Natural Gas Company, and notwithstanding the property owned by said applicant is outside the city limits of the city of Oklahoma City.

The evidence disclosed that the city gate measuring station, at which point the gas transmitted by the Oklahoma Natural's main line is measured to the Oklahoma Gas & Electric Company, is located approximately 1,792 feet west of the point at which the service line leading into the boiler room of the Wilson & Co. plant is connected, and that this city gate is more than 2,000 feet west and outside of the city limits of Oklahoma City.

The evidence shows that the Oklahoma Natural Gas Company owns and maintains a 6-inch high pressure gas line leading from the measuring station or gate, as it is called, to the point at which the service line used to supply the packing plant is connected, but that the Oklahoma Gas & Electric Company owns and maintains the service line leading from this main into the boiler room, a distance of something like 450 feet. It is shown that a 6-inch main line leading along Ash St. from the measuring station or gate, was installed originally as a protection against washouts at the river crossing, so as not to interrupt the service in the southwest part of Oklahoma City during flood periods. However, it is shown that since this in-

stallation it has been used as a regular supply line for that portion of Oklahoma City.

[fol. 24] The testimony with respect to the agreement between the two gas companies at the time of the promulgation of Order No. 1886, the gate rate order, is not explicit. There is a considerable portion of the record devoted to a discussion of its terms and as to whether or not it was a verbal agreement or in writing. It is disclosed, however, by the record that it was in the mind of the Oklahoma Natural Gas Company at the time and has been since, that it would have the right to render service to any customer outside of Oklahoma City which it might desire to serve, and it appears from the record that the Oklahoma Natural does not desire to disturb the present condition on account of its relationship with the Oklahoma Gas & Electric Company, one of its largest patrons.

It is shown that at the rate being charged for the gas delivered to the boiler room of applicant, the Oklahoma Gas & Electric Company receives approximately $100.00 per day or $36,000.00 per year, and it is contended that the property devoted to that service consists only of the 450 feet pipe line leading from the Oklahoma Natural into the boiler room. The packing plant shows that for the months from May to October, 1925, it used gas as follows, to-wit: In May, 55,570,000 cu. ft.; June, 58,155,000; July, 64,101,000; August, 59,830,000; September, 61,886,000 cu. ft.; October, 59,862,000 cu. ft.

It also is shown that the Oklahoma Natural Gas Company at the present time is rendering service to large industrial users of gas adjacent to other towns served by it, particularly the city of Tulsa, and Sapulpa at a rate of 35 cents for the first 100,000 cu. ft. and 15 cents per thousand cu. ft. for all in excess thereof, where the consumption amounts to 15 million cu. ft. per month. It is upon this hypothesis that applicant contends that since it is similarly situated to such concerns as are enjoying this favorable rate and consumes more gas per month than is required to be consumed in order to enjoy such a reduced rate, that it should also be served directly from the lines of the Oklahoma Natural Gas Company at a similar rate, and that it should not be compelled to pay the Oklahoma Gas & Electric Company a profit of approximately 5 cents per thousand cu. ft. for

the service which the record discloses that company readers in piping the gas directly from the Oklahoma Natural Line into its boiler room, a distance of about 450 feet.

The legal contention is made by the Oklahoma Natural Gas Company that under the law as construed by the courts respecting the obligation of a public utility to serve only where such an obligation has been assumed by the company either by the securing of a franchise or by the proffer of such service, it is justified in its refusal to render the service desired by the packing plant. What is known as the Chickasha case is referred to and the opinion of the Supreme Court of the State of Oklahoma in that case is relied upon to support that theory. The Commission, however, believes that the situation confronting the gas company with regard to service of this patron, is distinguishable from the situation which existed in the Chickasha case. There is no question under the facts but that the Oklahoma Natural Gas Company has assumed the obligation of supplying for use in Oklahoma City and vicinity, natural gas for use to those desiring same. It is true that this company holds no franchise in Oklahoma City and is not engaged in the general business of distributing natural gas for public consumption direct to the consumers. However, it is admitted that the company is offering its services to industries and plants outside of cities and towns, who desire large quantities of gas in connection with the operation of similar plants to that which is now under consideration.

The packing industry in Oklahoma City is one of the important industries of the State. Oklahoma City and the State at large is interested in having such plants operated upon the most economical basis which is reasonable and possible for them to be operated upon. It seems, therefore, that as a matter of general policy, the plant should be served upon as favorable terms and conditions as is practicable, reasonable and just to all concerned. In case the [fol. 25] Oklahoma Natural Gas Company is required to render the service desired, it will in no wise detract from the revenues received by the company for the supply of gas which it transports to Oklahoma City for general distribution. So therefore from the standpoint of the Oklahoma Natural Gas Company itself, it is true that it will in no wise be injured by undertaking the service. Moreover, under the terms of the agreement, so far as that agreement

has been delineated in this record, it would appear that such a requirement would be only carrying into effect the spirit and purpose of the understanding and agreement which was arrived at at the time of the promulgation of the gate rate order.

It is contended as a legal proposition by the packing plant, that under the terms of Sec. 7904 Compiled Oklahoma Statutes 1921, that the Oklahoma Natural — would be required to render the service by reason of the fact that its line traverses the property in which the packing plant holds at least a subservient interest. Upon this question the Commission does not feel that it is required by the facts in this case to rule.

We believe that insofar as the contention with respect to the meaning of the language contained in Order No. 1886 is concerned, as to the location of the city gate as contemplated by said order, it is not necessary for the purpose of this case to attempt to lay down any fast or definite rule. This is true for the reason that the proof shows that the Oklahoma Natural Gas Company is still the owner of the 6 inch main pipe lines extending 1792 feet within said city gate and to the point at which the service under consideration is demanded.

From all the considerations contained herein, and from the record, the Commission is of the opinion and finds:

First: That the Oklahoma Natural Gas Company, a public utility, is engaged in the production and transportation of natural gas to various sections of the State of Oklahoma and supplying various towns and cities with such gas for both industrial and domestic consumption.

Second: That is has obligated itself as a public utility to transport and to serve natural gas to all similarly situated, upon the same terms and conditions.

Third: That said Oklahoma Natural Gas Company is admittedly supplying and furnishing industries of similar size or smaller, with gas at a rate of 35 cents for the first 100,000 cu. ft. and 15 cents for each additional one thousand cubic feet where gas is consumed in quantities of 15 million cubic feet or more, per month.

Fourth: That Wilson & Co., Inc. of Oklahoma, is consuming in excess of 15 million cubic feet per month and comes

within the classification of service which the gas company has voluntarily established.

Fifth: That under the terms and purpose of the agreement entered into shortly after the promulgation of Order No. 1886 establishing the gate rate, the Oklahoma Natural Gas Company by that agreement, appears to have obligated itself to render service to those consumers adjacent to Oklahoma City which were theretofore served by the Oklahoma Gas & Electric Company.

Sixth: That the Oklahoma Natural Gas Company is the owner at present of the pipe lines leading from the measuring station or gate station approximately 1792 feet west of the point at which gas may be delivered to the packing plant.

Seventh: That the packing plant owned and operated by Wilson & Co., Inc., of Oklahoma, is situated outside of the city limits of the city of Oklahoma City, and entirely be-[fol. 26] yond the city border, and that all of the property necessary to be devoted to the rendition of the service petitioned for is located entirely beyond the city limits of Oklahoma City and entirely beyond the city borders of Oklahoma City.

Eighth: That applicant Wilson & Co., Inc., of Oklahoma was, at the time of the promulgation of Order 1886, establishing the gate rate and at the time of the agreement between the two gas companies wherein the Oklahoma Natural Gas Company agreed to render service to consumers outside of the city limits of Oklahoma City, operating its packing plant at its present location, and had theretofore from time to time been using natural gas as fuel, though not using same at the immediate time of said agreement.

Ninth: That the Oklahoma Natural Gas Company under the circumstances should be required to supply applicant Wilson & Co., Inc., of Oklahoma, with similar quantities of gas to that supplied other institutions located along its pipe line outside of incorporated cities upon the same terms and upon the same conditions, and that they are therefore obligated to serve applicant as petitioned for.

Tenth: That Wilson & Co., Inc., of Oklahoma, should be required either to take over and to purchase the line now

used by the Oklahoma Gas & Electric Company and which is serving the boiler room of Wilson & Co., Inc., of Oklahoma, or should be permitted to construct its own service line extending from such boiler room to a connection upon the pipe line of the Oklahoma Natural Gas Company adjacent to the plant.

Eleventh: That such measuring devices as may be necessary to install at the point in order to allow this service to be rendered, should be installed. All of such devices as may be necessary for the purpose of rendering the service to the plant to be installed at the expense of applicant.

It is therefore the Order of the Commission, premises considered, that the Oklahoma Natural Gas Company be and it is hereby required to supply Wilson & Co., Inc., of Oklahoma, at its packing plant located in the angle created by the intersection of Ash St. and May Ave. southwest of the city of Oklahoma City, with natural gas for its use as fuel at said plant, at the rate of 35 cents per thousand for the first 100,000 cu. ft. and 15 cents per thousand for each additional one thousand cubic feet thereafter, provided that this rate shall not apply to consumption of less than 15 million cubic feet per month.

This order is conditioned upon Wilson & Co., Inc. of Oklahoma, either taking over and purchasing the present service line owned and operated by the Oklahoma Gas & Electric Company, or the laying and installing of its own service lines, with all measuring devices and facilities which may be necessary to be installed in rendering said service, without expense to the Oklahoma Natural Gas Company.

It is the further Order of the Commission that said connection be made and gas turned into the service line of said Wilson & Co., Inc., of Oklahoma, within ten days from and after notice to said company of the completion of said service line and of the company's readiness *of* accept service.

Done at Oklahoma City this the 13th day of April, 1926.

Corporation Commission of Oklahoma, Fred Capshaw, Chairman; F. C. Carter, Commissioner.

Attest: Fred Riseling, Asst. Sec'y. (Seal.)

[fol. 27] EXHIBIT "C" TO BILL OF COMPLAINT

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 17,859

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and Oklahoma Natural Gas Company, a Corporation, Plaintiffs in Error,

vs.

WILSON & COMPANY et al., Defendants in Error.

Order Substituting Parties Appellant—Filed in Supreme Court of Oklahoma, Sep. 22, 1927. Jessie E. Moore, Clerk.

Now on this 22nd day of September, 1927, the interested parties having filed a stipulation for a substitution of parties appellant:

It is ordered that W. T. Phillips, Jr., H. J. Crawford, J. V. Ritts, Leonard C. Ritts, R. W. Hannan, A. W. Leonard and R. C. Sharp the directors of the Oklahoma Natural Gas Corporation, be and they are hereby substituted as parties appellant in lieu of Oklahoma Natural Gas Company.

Fred D. Branson, Chief Justice.

Endorsed: Filed in District Court on Oct. 13, 1930.

[fol. 28] EXHIBIT "D" TO BILL OF COMPLAINT

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

No. —

WILSON & CO., INC., OF OKLAHOMA, a Corporation, Plaintiff,

v.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and The Fidelity & Casualty Company of New York, a Corporation, Defendants

Petition

Wilson & Co. Inc. of Oklahoma, a corporation, for its first cause of action against the defendants and each of them, alleges:

First cause of action:

That plaintiff, Wilson & Co. Inc., of Oklahoma, is now and was at the date of the assignment hereinafter referred to a corporation duly organized and existing under the laws of the State of Delaware and is now engaged in the meat packing business at Oklahoma City, Oklahoma.

That Wilson & Co. Inc. of Oklahoma, who executed the said assignment, was at and before the times hereinafter set out a corporation duly organized and existing under the laws of the State of Oklahoma, and was engaged in the meat packing business at Oklahoma City, Oklahoma, until on or about the 3rd day of December, 1931, when it assigned, transferred and conveyed its packing business and plant at Oklahoma City, its assets, tangible and intangible, all rights of action, choses in action and claims, including the ones in suit, to the plaintiff. A specific assignment of the claims herein sued on was made in writing, a full, true, correct and complete copy whereof is attached to this petition, marked Exhibit "A" and made a part hereof.

That defendant, Oklahoma Gas & Electric Company, is now and was at the dates hereinafter mentioned a corporation organized and existing under the laws of the State of Oklahoma and engaged in the transportation and sale of natural gas at Oklahoma City.

That defendant, Fidelity & Casualty Company of New York, is and was at the times hereinafter specified a corporation organized and existing, as plaintiff is informed and believes, under the laws of the State of New York, and engaged in the execution, for a consideration, of surety, supersedeas, court, judicial and other forms of bonds within the State of Oklahoma.

For convenience Wilson & Co. Inc. *of Oklahoma of Delaware* will be referred to herein as "plaintiff"; Wilson & Co. Inc. of Oklahoma, the Oklahoma Corporation, will be referred to as the "Oklahoma Co."; the Oklahoma Gas & Electric Company as the "O. G. & E. Co."; the Oklahoma Natural Gas Company as the "gas company," and the Fidelity & Casualty Company of New York as the "bonding company."

That on or about November 13, 1925, the Oklahoma Co. as plaintiff filed a petition or complaint with the Corporation Commission of the State of Oklahoma against the gas company and O. G. & E. Co. praying for certain relief

against said corporations. A copy of said petition and complaint is hereto attached, marked Exhibit "B" and made a part hereof.

[fol. 29] On April 13, 1926, after a full hearing the said Corporation Commission duly made and entered its findings of fact, opinion, order and judgment upon the issues in said cause in favor of the Oklahoma Co. A copy of said findings, order and judgment is hereto attached, marked Exhibit "C" and made a part hereof.

That on or about April 22, 1926, O. G. & E. Co. served notice of appeal from said order and judgment and filed its application to have the facts and record certified to the Supreme Court of the State of Oklahoma for review. Copy of said application is hereto attached, marked Exhibit "D" and made a part hereof.

That on the 22nd day of April, 1926, O. G. & E. Co. prayed a supersedeas of said order and judgment during the pendency of the case on appeal before the Supreme Court of Oklahoma; a copy of said application being attached hereto, marked Exhibit "E" and made a part hereof.

That on April 19, 1926, Oklahoma Co. served upon O. G. & E. Co. and the gas company a written notice to the effect that it would take over by purchase the short service line leading into the Oklahoma Co.'s boiler room (referred to in Exhibit "C") upon such terms and conditions as might be reasonable and just and that in the event of failure to agree upon such terms that the Oklahoma Co. would parallel said service line with one of its own from its boiler room to the main gas line of the gas company. A full, true, correct and complete copy of said notice is hereto attached, marked Exhibit "F" and made a part hereof.

That on April 22, 1926, O. G. & E. Co. served notice of appeal from said order and judgment of the Corporation Commission and filed an application with said Commission to certify the facts and record to the Supreme Court. A full, true, correct and complete copy of said application is hereto attached, marked Exhibit "G" and made a part hereof.

That on April 26, 1926, said Corporation Commission allowed the appeal of the O. G. & E. Co. to the Supreme Court of the State of Oklahoma, and made an order staying, suspending and superseding the judgment and order

appealed from provided that O. G. & E. Co. should post with the Commission a good and sufficient bond in the sum of $25,000.00, conditioned upon repayment to Oklahoma Co. of all sums of money collected for gas supplied said company over and above the amount that the Oklahoma Co. would have paid for the said gas if it had been furnished under said order appealed from and after April 23, 1926, together with interest at the rate of six per cent per annum on all sums so collected pending final determination of said appeal. A full, true, correct and complete copy of said order is hereto attached, marked Exhibit "H" and made a part hereof.

And on the same date, to-wit: April 27, 1926, the Corporation Commission allowed the appeal of the gas company to the Supreme Court of the State of Oklahoma, but found and adjudged that since O. G. & E. Co. had been permitted to supersede the order appealed from by the execution and filing of a $25,000.00 bond protecting the Oklahoma Co. in any amount charged and collected for gas pending the appeal in excess of the amount the Oklahoma Co. would have paid for gas if it had been furnished under the order appealed from, and since the gas company was not at that time supplying the Oklahoma Co., that only a nominal bond should be required. A full, true, correct and complete copy of said order is hereto attached, marked Exhibit "I" and made a part hereof.

That thereafter, to-wit: on May 6, 1926, the defendant, O. G. & E. Co., as principal, and the defendant bonding company, as surety, executed and delivered to the said Commission their bond in the sum of $25,000.00 payable to [fol. 30] Oklahoma Co. conditioned that the O. G. & E. Co. should pay the Oklahoma Co. all amounts collected from it by said O. G. & E. Co. for gas furnished in excess of the amount that the Oklahoma Co. would have paid if the said gas had been furnished under said order appealed from, together with six per cent interest on any such amounts from and after April 23, 1926. A full, true, correct and complete copy of said bond is hereto attached, marked Exhibit "J" and made a part hereof.

That on the 29th day of April, 1930, the Supreme Court of the State of Oklahoma rendered its written decision affirming in whole the said order and judgment of the Corporation Commission appealed from and on May 27, 1930,

petition for rehearing on said appeal was denied by said Supreme Court and the opinion therein became final. (See O. G. & E. Co. v. Wilson & Co., 146 Okla. 272, 288 Pac. 316.)

In consideration of the premises the foregoing bond and the two succeeding bonds (each of which was approved by the court) herein sued on and the statements of the O. G. & E. Co., hereinafter set out, the Oklahoma Co. purchased from O. G. & E. Co. between February 23, 1926, and February 19, 1928, fuel gas on the dates, in the amounts and for the sums shown in Exhibit "K" hereto attached and made a part hereof. The excess amount actually paid by Oklahoma Co. for such gas over the amount which should and would have been paid if the same had been furnished and paid for under the order appealed from, to-wit: order No. 3388 and affirmed by the Supreme Court as aforesaid, is $80,621.80; the accrued interest on the various items constituting said total, computed to April 18, 1931, is $19,306.35, payment of all of which has been demanded of but has been refused by defendants.

Wherefore, plaintiff prays judgment against O. G. & E. Co. and the Fidelity & Casualty Company of New York for $25,000.00, the amount of principal of the bond hereinbefore referred to and now sued on, and interest thereon at six per cent from the breach thereof, for all costs and for all proper relief, both equitable and legal.

Second Cause of Action:

For second cause of action plaintiff hereby makes each and all of the allegations of plaintiff's first cause of action a part and parcel of this its second cause of action as fully as if recopied herein, and, in addition, alleges that on or about the 27th day of December, 1926, in consideration of the premises and further purchases of gas, to further secure the Oklahoma Co., said O. G. & E. Co., as principal, and the said bonding company, as surety, executed and filed in the Supreme Court in cause No. 17,859, entitled Oklahoma Gas & Electric Co., et al., plaintiffs in error, v. Wilson & Co. Inc. of Oklahoma, a corporation, et al., defendants in error, being the case first herein referred to on appeal, a bond in the sum of $15,000.00 setting out in substance that, whereas, Wilson & Co., Inc. of Oklahoma had made application in the cause for additional bond to further secure said company on account of additional potential li-

bility incurred by reason of the passage of time and furnishing more gas and that the O. G. & E. Co. had agreed to execute such additional security. Said bond is conditioned that the O. G. & E. Co. should pay to Wilson & Co., in the event of the affirmance or dismissal of said appeal such amount as said electric company should collect for gas from Wilson & Co. in excess of the amount that Wilson & Co. should or would have paid if gas had been furnished to them under order No. 3388 appealed from and with interest thereon at six per cent from April 23, 1926. A full, true, correct and complete copy of said bond is hereto attached, marked Exhibit "L" and made a part hereof.

[fol. 31] Upon the final decision of the Supreme Court in the cause as hereinbefore referred to and by reason of the payment by the Oklahoma Co. to the said O. G. & E. Co. of the various sums of money for gas as shown by Exhibit "K" attached to the petition as a part of the first cause of action, and, by reference, made part hereof, the Oklahoma Co. became entitled to collect the said $15,000.00 bond which was in default as aforesaid and interest thereon from the date of such breach and payment, of all of which has been demanded of defendants, but payment has been refused.

Wherefore, plaintiff demands judgment against Oklahoma Gas & Electric Company and the Fidelity & Casualty Company of New York for $15,000.00, the principal of said bond, together with six per cent interest from the date of the breach thereof, for all costs and for such other legal and equitable relief as may be proper in the premises.

Third Cause of Action:

Plaintiff for its third cause of action makes all the allegations of the first and second causes of action as hereinbefore set out a part of this its third cause of action as fully as if recopied herein and in addition thereto alleges that on July 6, 1927, said O. G. & E. Co., as principal, and the Fidelity & Casualty Company of New York, as surety, in consideration of premises and the purchase of gas made and to be made by the Oklahoma Co., executed, delivered and filed in the last named cause their bond in the sum of $10,000.00, providing, in substance, that Wilson & Co. Inc. of Oklahoma had requested additional bond to further secure it on account of further potential liability incurred by

reason of further lapse of time and the furnishing of further fuel gas; that the O. G. & E. Co. had agreed to comply with said request to execute and file further security, and in obedience to such request and agreement the said $10,000.00 bond was executed and filed and that the same is conditioned that the electric company should pay to Wilson & Co., Inc. of Oklahoma all amounts collected by said electric company in excess of the amount or amounts which Wilson & Co. would and should have paid if the said gas had been furnished under the order of the Corporation Commission No. 3388, appealed from as aforesaid, together with six per cent interest upon any such amount from and after April 23, 1926, in the event of the dismissal or affirmance of said case upon appeal. A full, true, correct and complete copy of said bond is hereto attached, marked Exhibit "M" and made a part hereof.

Plaintiff further avers that by reason of the order of said Corporation Commission No. 3388 and the affirmance of said order by the Supreme Court as aforesaid and by reason of the purchase of gas and payments made for same by the Oklahoma Co., all as disclosed by Exhibit "K" attached to plaintiff's first cause of action and made a part hereof by reference, the said bond was breached and the conditions thereof became absolute and the same became payable to plaintiff according to its full face together with interest thereon from such breach.

Wherefore, plaintiff demands judgment against the defendant, the Oklahoma Gas & Electric Company, a corporation, and Fidelity & Casualty Company of New York, a corporation, for $10,000.00, the principal of said bond, together with six per cent interest thereon from the date of breach thereof, for costs and for all other proper relief, legal and equitable.

[fol. 32] Fourth Cause of Action:

For a fourth cause of action plaintiff alleges that it makes each and all of the allegations of the first, second, and third causes of action hereinbefore set out a part of this its fourth cause of action as fully as if recopied herein and in addition alleges that under the statutes of Oklahoma

appeals from the Corporation Commission are given precedence in hearing and disposition by the Supreme Court, but for reasons unknown to this plaintiff this procedure was not observed in the decision on the appeal in this cause and the case lay for a long time undisposed of in said court, and the additional bonds, the necessity for which did not appear at the time of appeal, were given to meet such emergency.

Soon after giving the last bond herein sued on, the exact date not being known to plaintiff, the Oklahoma Co. advised the O. G. & E. Co. that the amounts paid for gas supplied the Oklahoma Co. over and above the amounts which should have been paid if the fuel had been furnished under the said order appealed from, were equal to or in excess of the aggregate amount of the supersedeas bonds filed, and that unless additional bonds were filed, the Oklahoma Co. would be compelled to cease purchasing gas from O. G. & E. Co. or would seek from the Supreme Court an order requiring further and additional security. The O. G. & E. Co. at that time requested plaintiff to continue to purchase gas from it and that it would file additional bond but that such bonds were expensive and that the O. G. & E. Co. was financially responsible and able to respond to the Oklahoma Co. for all excess sums collected over and above those which would and should have been payable if the gas had been supplied under the order appealed from as aforesaid and that if the Oklahoma Co. would continue to purchase gas from it and would save it the expense of additional bonds that the O. G. & E. Co. was abundantly able to respond and would respond to said Oklahoma Co. for all such excesses and further that the O. G. & E. Co. was the real party in interest as defendant and had the only financial interest therein and that while the gas company was nominally a real defendant that the proof showed otherwise and that the Corporation Commission in effect found otherwise. That the bond required of the gas company was a mere nominal bond. The bond required of the O. G. & E. Co. was the only one ordered or which was in contemplation of the Corporation Commission or the parties to be relied upon to protect the Oklahoma Co. That the litigation before the Corporation Commission and thereafter upon appeal was all prosecuted for the sole benefit of the O. G. & E. Co. which was the real party in interest in said litiga-

tion and all of this was made known to the Oklahoma Co. by the O. G. & E. Co., not only by the evidence and records in the case, but also by the statements of J. F. Owens, its general manager, and the counsel representing the O. G. & E. Co. at or about the time the bonds aforesaid were given, which statements were to the effect that the O. G. & E. Co. would suffer the only loss if the order of the Corporation Commission were affirmed and that it was called upon to bear the burden of the appeal on that account, and that it would have to respond to the Oklahoma Co.'s loss irrespective of the bonds, which it was abundantly able to do. Such statements were made to forestall and did forestall the demand for further bonds.

Plaintiff alleges that said O. G. & E. Co. was the only real party in interest as against plaintiff; that the only financial loss arising from the affirmance of the Corporation Commission's Order No. 3388 fell upon the said O. G. & E. Co., and the entire loss resulting to the Oklahoma Co. from a suspension of the order of the Corporation Commission aforesaid inured in toto to the benefit of said O. G. & E. Co. and not to the gas company. That while the Corporation Commission order was directed in part or nominally at the gas company, the beneficial party in in- [fols. 33 & 34] terest in fact was not the latter company, but was the O. G. & E. Co. and as such having suspended the order the plaintiff, whose plant was equipped for gas as fuel, was in effect compelled to buy fuel from said O. G. & E. Co., the only remaining source of supply of such fuel at Oklahoma City.

The Oklahoma Co., relying upon the fact that O. G. & E. Co. was the real party in interest, the good faith of the O. G. & E. Co. in its interpretation of the relation and duties of the respective parties, as hereinbefore set out to the effect that it was the real party in interest in the litigation and the appeal and therefore liable for and would pay the Oklahoma Co.'s loss irrespective of bond, forebore to require other bonds, but continued to and did purchase gas as shown by Exhibit "K" and paid and the O. G. & E. Co. received therefor $80,621.80, that is, $30,621.80 in excess of the aggregate principal of the bonds herein sued on and in excess of the amount that the Oklahoma Co. would have paid for said gas had it been furnished under order 3388.

Plaintiff further says that the O. G. & E. Co. is now estopped by reason of the matters hereinbefore set out from setting up any irregularity either in the bonds or in respect to the fourth cause of action as against this plaintiff which has acted in good faith in reliance upon this record and the good faith, promises and the interpretation of its legal responsibility by said O. G. & E. Co. and has purchased gas from said company as shown by Exhibit "K" and has paid therefor a rate in excess of the rate which it would have enjoyed if said order had not been suspended and that every dollar of the loss to the Oklahoma Co. and therefore plaintiff's loss, inured to the benefit of the O. G. & E. Co. and was made possible only by a suspension of said order during the appeal which was groundless but which was prosecuted for the benefit of the O. G. & E. Co., since the revenues and receipts of the gas company for gas could not have been affected in any way by the affirmance or disaffirmance of said order No. 3388 but the revenue of the O. G. & E. Co. in the event of disaffirmance of said order would have been increased by the exact amount of the Oklahoma Co.'s loss, but no part of the gain of the O. G. & E. Co. or of the loss of the Oklahoma Co. would affect the receipts of the gas company for gas.

In the litigation before the Commission and on appeal it was the contention of the O. G. & E. Co. that under the gate rate order of the Commission No. 1886 and the agreement made between O. G. & E. Co. and the gas company at the time said order was made the O. G. & E. Co. had the right and the gas company did not have the right to serve Wilson & Co. The judgment and order of the Commission affirmed on appeal held in effect that the O. G. & E. Co. did not, under said order and agreement aforesaid, have such right, but that the gas company had such right and should furnish gas to Wilson & Co., it being admitted that one of the two companies had the right and also owed the duty to so furnish gas.

Wherefore, premises considered, plaintiff demands judgment on its fourth cause of action against the Oklahoma Gas & Electric Company for the sum of $30,621.80, together with six per cent interest on the various payments making up this total, as well as the payments making up the total recovered in the first three causes of action, less any in-

terest recovered in said three causes of action, *less any interest recovered in said three causes of action* and for such other and further relief as to the court may seem just and proper.

——— ———, ——— ———, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 35] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

TEMPORARY RESTRAINING ORDER—Filed May 20, 1932

It appearing from the verified bill of complaint filed herein that the defendants are pressing the enforcement of the order of the Corporation Commission of the State of Oklahoma alleged by the complainants to be invalid and void, and from complainants' allegations said complainants will suffer irreparable loss and damage unless this Court grants a restraining order, pending hearing upon complainants' application for temporary injunction, wherefore,

It is hereby ordered, adjudged and decreed that respondents, The Corporation Commission of the State of Oklahoma, Paul Walker, C. C. Childers and E. R. Hughes, mem-
[fols. 36-52] bers of said Commission, J. Berry King, Attorney General of the State of Oklahoma, Oklahoma Packing Company, a corporation, formerly Wilson & Company, Inc. of Oklahoma, an Oklahoma corporation, and Wilson & Company, Inc. of Oklahoma, a Delaware corporation, and each of them, their assistants, agents, attorneys, employees and all persons acting through or under them, be and they are hereby, pending the hearing upon application for temporary injunction, enjoined and restrained from enforcing or taking further steps to enforce, or doing any act toward the enforcement of or to obtain any benefit under said Order No. 3388 of the Corporation Commission of the State of Oklahoma set forth in complainants' bill.

It is further ordered that the application of complainants for temporary injunction be set down for hearing at Oklahoma City, Oklahoma, on the 20 day of May, 1932, at ten

o'clock A. M., at which time defendants and each of them are cited to appear and show cause why said temporary injunction should not be granted.

It is further ordered that service hereof shall be made by copy of this order, together with copy of bill of complaint herein, being served upon respondents and each of them, and upon the Governor or Acting Governor of the State of Oklahoma and the Attorney General of said state, said service to be at least five days before the date set for said hearing for said temporary injunction.

This May 20, 1932.

Edgar S. Vaught, District Judge.

[File endorsement omitted.]

[fol. 53] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

MOTION OF WILSON & CO., OF OKLAHOMA, A DELAWARE CORPORATION, APPEARING SPECIALLY AND SOLELY FOR THE PURPOSE OF OBJECTING TO BEING SUED IN THE WESTERN DISTRICT OF OKLAHOMA—Filed June 9, 1932

Now comes Wilson & Co., Inc., of Oklahoma, a Delaware corporation, defendant in the above-entitled cause, appearing specially and solely for the purpose of objecting to being sued in the Western District of Oklahoma, and moves the Court to dismiss the Bill of Complaint in the above-entitled cause in so far as it relates to this defendant, Wil-
[fol. 54] son & Co., Inc., of Oklahoma, for the reason that the defendant, Wilson & Co., Inc., of Oklahoma is not an inhabitant of the Western District of Oklahoma, but is a corporation organized under the laws of the state of Delaware, and an inhabitant of the state of Delaware, and has its principal office in the state of Delaware, and the United States District Court of the District of Delaware is the District Court of the United States which may have jurisdiction of suits arising under the constitution and laws of the United States of America against this defendant, Wilson & Co., Inc., of Oklahoma, a Delaware corporation, and is the proper venue of the same, and not the United States

District Court of the Western District of Oklahoma, in which this suit is brought.

In support of said motion Wilson & Co., Inc., of Oklahoma, a Delaware corporation, defendant, shows the Court that it appears from the Bill of Complaint that this defendant, Wilson & Co., Inc., of Oklahoma, is a corporation organized and existing under the laws of the state of Delaware and a citizen of said state; that the sole Federal ground for jurisdiction is that this is a suit in equity arising under, and involving the construction and application of the constitution and laws of the United States.

This defendant, Wilson & Co., Inc., of Oklahoma, is an [fol. 55] inhabitant of the state of Delaware and a civil suit cannot be brought in any other district than that whereof it is an inhabitant.

Wilson & Co., Inc., of Oklahoma, a Delaware Corporation, by W. R. Brown, C. D. Bennett, Solicitors for Defendant, Wilson & Co., Inc., of Oklahoma, a Delaware Corporation, Appearing Specially and Solely for the Above Purpose.

[File endorsement omitted.]

[fol. 56] In United States District Court for the Western District of Oklahoma

[Title omitted]

Answer of Oklahoma Packing Company, Formerly Wilson & Co., Inc., of Oklahoma, an Oklahoma Corporation, to the Bill of Complaint—Filed June 9, 1932

For answer to the Bill of Complaint this defendant, Oklahoma Packing Company, in the above-entitled cause, says:

1. Answering, this defendant admits the allegations contained in paragraph I of said bill.

2. This defendant admits that Oklahoma Natural Gas Company was a corporation engaged, within the state of Oklahoma, in the business of distributing natural gas as a public utility. This defendant has no knowledge as to whether the said Oklahoma Natural Gas Company had been dissolved as a corporation, or whether W. T. Phillips, Jr.,

H. J. Crawford, J. V. Ritts, Leonard C. Ritts, R. W. Hannan, A. W. Leonard and R. C. Sharp are directors of the Oklahoma Natural Gas Company, or as to whether they [fol. 57] are duly authorized to sue in winding up the affairs of said corporation, as alleged in paragraph II of said bill; and therefore denies that said corporation has been dissolved, and denies that said individuals are the directors of said corporation; and further denies that said individuals are authorized by law to maintain this suit.

3. This defendant has no knowledge as to whether the Oklahoma Natural Gas Corporation is a corporation or a public utility or the successor in interest of the Oklahoma Natural Gas Company, as alleged in paragraph II of said bill; therefore denies that said Oklahoma Natural Gas Corporation is a corporation; denies that it is a public utility; and further denies that it is the successor in interest of the said Oklahoma Natural Gas Company. This defendant further answering says the allegations in said bill touching and referring to Oklahoma Natural Gas Corporation are immaterial to this cause, and that the Oklahoma Natural Gas Corporation has no interest in this suit and is improperly joined as a plaintiff.

4. This defendant, further answering, admits that the Corporation Commission of Oklahoma is a body created by the Constitution of the State of Oklahoma, and that Paul Walker, C. C. Childers, and E. R. Hughes are the qualified and acting members of said Corporation Commission; that J. Berry King is the Attorney General of the State of Oklahoma and the attorney for the Corporation Commission. This defendant, further answering, says that said Corporation Commission is not an administrative body; that said Corporation Commission's powers, duties, and functions are defined and fixed by the Constitution and [fol. 58] laws of the State of Oklahoma; that said Corporation Commission possesses and exercises judicial powers and functions as well as other powers under the constitution and laws of the State of Oklahoma; that the allegation in paragraph II of said bill that said Corporation Commission is "an administrative body created by the constitution of the State of Oklahoma" is a mere conclusion of law, and as such is immaterial and should be disregarded and stricken from said bill.

5. This defendant further answering admits that it is a corporation organized under the laws of the State of Oklahoma, and that prior to March, 1931, it was engaged in operating a meat packing plant in Oklahoma County, outside the City of Oklahoma City.

6. This defendant admits that Wilson & Co., Inc., of Oklahoma, a Delaware corporation, did, in March, 1931, purchase from this defendant the packing plant and business located in Oklahoma County, Oklahoma, and choses in action, particularly any claim this defendant had against Oklahoma Gas and Electric Company and its surety, Fidelity & Casualty Company of New York, and has since said purchase carried on business at the said packing plant in Oklahoma County, Oklahoma. This defendant admits that its name has been changed to Oklahoma Packing Company.

7. This defendant denies that this is a suit in equity arising under, and involving the construction and application of the constitution and laws of the United States, as alleged in paragraph III of said bill.

[fol. 59] 8. This defendant admits that the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company are public utilities, and that the Corporation Commission of the State of Oklahoma is vested with the power to compel them to perform their public duties, and to enforce its orders by imposing fines against them for the violation of any of their public duties. This defendant further answering says that the allegations contained in paragraph IV of said bill as to the power and duty of the Corporation Commission in regulating and controlling the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company and fixing their charges therefor and rates are immaterial in this case and should be stricken; that said allegations are mere conclusions of law.

9. This defendant further answering, admits that the Oklahoma Gas & Electric Company was on and prior to November 13, 1925, the owner of a gas distributing system in the City of Oklahoma City; that this defendant has no knowledge as to whether the Oklahoma Gas & Electric Company own any gas distributing system without the limits of the City of Oklahoma City. This defendant has no

knowledge as to whether the Oklahoma Gas & Electric Company purchased said gas from Oklahoma Natural Gas Company at the city gates or not, or as to the prices or terms upon which said gas was delivered by the Oklahoma Natural Gas Company, if at all, to the Oklahoma Gas & Electric Company. This defendant has no knowledge as to whether the Oklahoma Natural Gas Company either produced or purchased said gas and transmitted it to the vicinity of Oklahoma City, and there delivered to the Oklahoma Gas & Electric Company through meters at said city gates; [fol. 60] and therefore denies that the Oklahoma Gas & Electric Company owned any distributing system without limits of the city of Oklahoma City; and denies that the Oklahoma Gas & Electric Company purchased gas from the Oklahoma Natural Gas Company; and denies that the Oklahoma Natural Gas Company delivered gas to the Oklamoha Gas & Electric Company.

10. This defendant admits that prior to March, 1931, it owned a manufacturing plant situated in Oklahoma County, without the corporate limits of said Oklahoma City. This defendant denies that said plant was immediately adjacent to the city of Oklahoma City, and denies that its plant was within the city gates as fixed by the Corporation Commission of Oklahoma for the delivery of gas by the Oklahoma Natural Gas Company to the Oklahoma Gas & Electric Company. This defendant, further answering, says the Oklahoma Natural Gas Company and the Oklahoma Gas & Electric Company had been ordered by the Corporation Commission of the State of Oklahoma to establish city gates and measuring stations at the city limits of the city of Oklahoma City; that they had wholly failed to abide by said order, and, on the contrary, established measuring stations or meters far beyond the city limits. This defendant further denies that its said plant was on the distribuing lines of the Oklahoma Gas & Electric Company.

11. This defendant, further answering, says that prior to the 13th day of November, 1925, it purchased gas from the Oklahoma Gas & Electric Company at the rates of 68¢ per thousand for the first 100,000 cubic feet, and 20¢ per thousand cubic feet for all in excess thereof, where the consumption amounted to 15,000,000 cubic feet or more

per month. This defendant denies that the said rates were [fol. 61] fixed by the Corporation Commission or were charged other consumers or purchasers of gas similarly situated. This defendant further answering, says that upon information and belief the said gas was delivered to this defendant under a contract or agreement between the Oklahoma Natural Gas Company and the Oklahoma Gas & Electric Company, the contents of which agreement are not known to this defendant. This defendant, further answering, on information and belief says that the distributing lines within the measuring station used in supplying the gas to this defendant were owned by the Oklahoma Natural Gas Company.

12. This defendant, further answering, admits that it did on or about the 13th day of November, 1925, file its petition with the Corporation Commission of the State of Oklahoma, a copy of which is attached to the petition and marked "Exhibit A", as alleged in paragraph IV of said bill. This defendant, further answering, admits that the Corporation Commission did on or about the 13th day of April, 1926, make its Findings of Fact, Opinion and Order, a true copy of which is attached to said bill and marked "Exhibit B".

13. This defendant admits the allegations in paragraph V of said bill. There is attached hereto, and marked "Exhibits A, B and C", true copies of said supersedeas bonds filed by Oklahoma Gas & Electric Company, and made a part hereof. That said Oklahoma Gas & Electric Company has not refunded, in whole or in part, any of the amounts collected in excess of the rates named in said order #3388.

14. This defendant denies that the order of the Corporation Commission requiring the Oklahoma Natural Gas Company to furnish gas to this defendant was legislative; and likewise denies that the decision of the Supreme Court of Oklahoma affirming the order is administrative and legislative; and denies that these complainants have any right to sue in this court and have the decision of this Court upon the law and facts affecting the validity of said order as affirmed by the Supreme Court of Oklahoma, as [fol. 62] alleged in paragraph VI of said bill. This defendant, further answering, says that the allegations con-

tained in paragraph VI of said bill are mere conclusions of law and are immaterial to this cause and should be stricken from the said bill.

15. This defendant denies that the order of the Corporation Commission is null and void in that it requires complainant Oklahoma Natural Gas Company, against its will and over its objection, to supply natural gas as a fuel directly to this defendant, when it has never undertaken or professed to furnish gas to this defendant or to industries or other gas consumers similarly situated to this defendant. This defendant further denies that said order constitutes the appropriation of private property for public use without just compensation, and denies that it deprives the complainants, or either of them, of their property without due process of law, contrary to, and in violation of the Fourteenth Amendment to the Constitution of the United States, as alleged in paragraph VII of said bill. This defendant, further answering, says that the Oklahoma Natural Gas Company did, as a public utility, furnish gas to this defendant's plant and to other industries and to other gas consumers similarly situated to the plant of this defendant long prior to the entering of said order.

16. This defendant says that the said order did not forbid or prevent Oklahoma Gas & Electric Company furnishing gas to this defendant; that said order required Oklahoma Natural Gas Company to furnish gas to this defendant without discrimination, upon the same terms as it furnished gas to others. There was nothing in the order preventing Oklahoma Gas & Electric Company furnishing gas to this defendant upon the same terms and conditions. The Corporation Commission, by its order, per-
[fol. 63] mitted Oklahoma Gas & Electric Company to supersede the order upon the condition that it refund to this defendant the amounts collected in excess of the amount that this defendant would have paid if gas had been furnished by Oklahoma Natural Gas Company under the said order. The Oklahoma Gas & Electric Company did furnish gas to this defendant under a bond and contract to refund to this defendant, in the event said order was affirmed by the Supreme Court of Oklahoma, the amount collected in excess of the amount this defendant would have paid if gas had been furnished by Oklahoma Natural Gas Company under said order. Oklahoma Gas & Elec-

tric Company is not deprived of any property right by said order. The furnishing of gas to this defendant was only profitable and remunerative to Oklahoma Gas & Electric Company because of an illegal conspiracy, in restaint of trade or commerce, entered into by and between Oklahoma Gas & Electric Company and Oklahoma Natural Gas Company.

17. This defendant says that it is without knowledge or information, except as contained in paragraph VII of said bill, as to the alleged oral contract existing between Oklahoma Gas & Electric Company and Oklahoma Natural Gas Company whereby this defendant and other consumers similarly situated would not be furnished gas by Oklahoma Natural Gas Company, and therefore admits the same. This defendant says that said verbal contract was a conspiracy in restraint of trade and against public policy and illegal under section 11017 of Compiled Oklahoma Statutes (1921); that said Oklahoma Gas & Electric Company had and obtained no rights under said contract.

[fol. 64] 18. This defendant, further answering paragraph VIII of said bill, admits that on the 3rd day of December, 1931, Wilson & Co., Inc., of Oklahoma, a Delaware corporation, filed its petition in the District Court of Oklahoma County, Oklahoma, against the complainant Oklahoma Gas & Electric Company and the Fidelity & Casualty Company of New York. This defendant denies that the said Delaware corporation in said suit seeks to enforce the said order of the said Corporation Commission of Oklahoma. This defendant admits that the Delaware corporation seeks to collect a large sum of money from the complainant Oklahoma Gas & Electric Company, and from the Fidelity & Casualty Company of New York, and that a copy of the said petition is attached to the said bill and marked "Exhibit D". This defendant denies that the said Delaware corporation is a successor of this defendant, and says that the said Delaware corporation is an assignee of the rights of this defendant upon certain bonds or contracts executed by the Oklahoma Gas & Electric Company and the Fidelity & Casualty Company of New York, as surety, and that said suit now pending in the District Court of Oklahoma County is a suit to enforce said bonds or contracts, and is not a suit to enforce the order of the Corporation Commission requiring the Oklahoma Natural Gas

Company to furnish gas to this defendant or to the Delaware corporation. This defendant, further answering, denies that this said suit filed and commenced in the District Court of Oklahoma County should or can be enjoined by this Court; that this Court has no power or jurisdiction, right, or authority to enjoin said suit. This defendant, further answering, admits that the Oklahoma Gas & Electric Company is the only plaintiff in this suit that has any interest in, or is a party to the suit filed by the Delaware cor- [fol. 65] poration in the District Court of Oklahoma County, and that the interest of the plaintiff is not joint, and that paragraph VIII of the said bill is improperly joined in this cause of action. This defendant, further answering, says that this defendant and the Corporation Commission of the State of Oklahoma, and its members and the Attorney General of the State of Oklahoma are not parties to, and have no interest in the suit pending in the District Court of Oklahoma County, and the liability of the defendants as set forth in paragraph VIII is not joint, and said paragraph VIII is improperly joined in this bill. This defendant, further answering, denies that the cause of action set up by the Delaware corporation in the suit filed in the District Court of Oklahoma County is based upon the alleged validity of the order of the Corporation Commission or is based upon the order of the Corporation Commission. The said order of the Corporation Commission is directed against the Oklahoma Natural Gas Company and no other complainant in this cause, and is not directed against, and cannot be enforced against the Oklahoma Gas & Electric Company; that the said suit pending in the District Court of Oklahoma County is a suit based upon the contract or bond of the Oklahoma Gas & Electric Company and the Fidelity & Casualty Company of New York, and is not filed to harass or annoy the Oklahoma Gas & Electric Company. This defendant, further answering, denies that a determination and decision of this Court that the said order of the Corporation Commission was invalid would bar the Delaware corporation from maintaining its action against the Oklahoma Gas & Electric Company and its surety, the Fidelity & Casualty Company of New York, based upon the bonds and contracts sued on in the suit [fol. 66] now pending in the District Court of Oklahoma County. This defendant further denies that this Court has

jurisdiction to determine the validity of said order of the Corporation Commission.

19. This defendant, further answering, denies that unless restrained and enjoined the Corporation Commission will enforce the said order against the Oklahoma Natural Gas Company. This defendant further denies that the action in the District Court of Oklahoma County is an attempt to enforce said order of the Corporation Commission or is an attempt to compel the Oklahoma Natural Gas Company to furnish gas to either this defendant or the Delaware corporation. This defendant, further answering, denies that the prosecution of the action now pending in the District Court of Oklahoma County will result in irreparable loss and damage to the complainants or either or any of them, or will constitute the taking of property without full compensation and without due process of law, contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States.

20. This defendant, further answering, says that the said order of the Corporation Commission is not binding upon or enforceable against the Oklahoma Natural Gas Corporation. This defendant, further answering, denies that disobedience to said order by any or either of said complainants will subject them to fines or penalties, and that the complainants will be deprived of their property without due process of law or will be denied equal protection of the laws.

21. This defendant, further answering, says that no action can be taken against these plaintiffs, or any or either of them, founded upon any matter or thing set up in said bill, except by bringing an action at law in some court of [fol. 67] competent jurisdiction; that the said complainants, and each of them, have an adequate remedy at law in defending any such suit or action, and this Court is without power or jurisdiction to enjoin either or any of the defendants from bringing any action at law against either or any of these plaintiffs.

22. As a defense of law appearing upon the face of the Bill of Complaint this defendant says:

(a) That the plaintiffs have not in and by their said bill made or stated such case as entitled them in this court

of equity to any recovery or relief from or against this defendant touching the matters contained in said Bill of Complaint.

(b) It appears from paragraph III of said bill that the ground of jurisdiction is that it is a suit in equity under and involving the construction and application of the constitution and laws of the United States; and by paragraph VII of said bill that the sole claim arising under the constitution and laws of the United States is that the order of the Corporation Commission constitutes the appropriation of the property of the plaintiff Oklahoma Natural Gas Company for public use without just compensation, and deprives the Oklahoma Natural Gas Company of its property without due process of law, contrary to and in violation of the Fourteenth Amendment of the Constitution of the United States; that it does not appear from said bill that the property of the plaintiff, Oklahoma Gas & Electric Company, is taken in violation of the constitution and laws of the United States and the Oklahoma Gas & Electric Company is improperly joined as a plaintiff. The only claim that the constitutional rights of Oklahoma Gas & Electric Company are violated by said order is founded on an illegal contract or conspiracy in restraint of trade or commerce entered into between the plaintiffs, Oklahoma Gas & Electric Company and Oklahoma Natural Gas Com-[fol. 68] pany, as will more fully appear from paragraph VII of said bill.

(c) That it appears in and by said bill that the plaintiffs do not come into this court of equity with clean hands. It appears from paragraph VII of said bill that these plaintiffs are seeking the aid of this court of equity to enable them to carry out an illegal conspiracy in restraint of trade or commerce within the State of Oklahoma, in violation of section 11017 of Compiled Oklahoma Statutes (1921).

(d) That so much of paragraph VIII of said bill as sets up the suit filed in the District Court of Oklahoma County, Oklahoma, should be stricken from the bill, because it does not appear from said bill that this Court has any jurisdiction to enjoin the said suit, and it does not appear from said bill that there is a federal question in said suit. It appears from said bill that said suit was filed against only one of the plaintiffs, Oklahoma Gas & Electric Company, and that

the other plaintiffs cannot be joined in a suit to enjoin the said suit pending in the District Court of Oklahoma County, Oklahoma. It appears from the said bill that the cause of action set up in paragraph VIII is not joint as to all the defendants, and cannot be joined with the cause of action seeking to enjoin the enforcement of the order of the Corporation Commission under Equity Rule 26; that the cause of action set up in paragraph VIII is not joint as to all of the plaintiffs and cannot be joined with the cause of action seeking to enjoin the enforcement of the order of the Corporation Commission under Equity Rule 26. It appears from said bill that the said suit filed in the District Court of Oklahoma County, Oklahoma, is a suit founded upon bonds and agreements entered into by the Oklahoma Gas & Electric Company and is to enforce said bonds and agreements, and is not a suit to enforce the order of the Cor-
[fol. 69] poration Commission requiring the Oklahoma Natural Gas Company to furnish gas to this defendant; that Wilson & Co., Inc., of Oklahoma, a Delaware corporation, plaintiff in the suit filed in the District Court of Oklahoma County, Oklahoma, is a necessary party to a suit to enjoin the prosecution of that suit; that the said Delaware corporation has no interest in any other matter or thing alleged in said Bill of Complaint, and is improperly joined as a defendant in this suit.

(e) That this Court cannot, in this suit, reverse, set aside, or vacate the affirmance of the order of the corporation Commission by the Supreme Court of Oklahoma, and an injunction issued by this court enjoining the enforcement of said order against the Oklahoma Natural Gas Company and/or its successors, would constitute no defense to a suit on the bonds and agreements entered into by the Oklahoma Gas & Electric Company and would not be sufficient grounds for equitable relief.

(f) This Court is prohibited by statute from enjoining the said case filed in the District Court of Oklahoma County, Oklahoma.

(g) Paragraph III of said bill should be stricken, as a mere conclusion of law, as it states no facts in support of this conclusion.

(h) Paragraph VI of said bill should be stricken, as a mere conclusion of the pleader.

(i) That so much of paragraph VII of said bill as alleges that the property of Oklahoma Natural Gas Company is taken for public use without just compensation or without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States, should be [fol. 70] stricken as it fails to state any facts that show that its property is taken without due process or for public use without just compensation, the allegation being a mere conclusion of the pleader, unsupported by any facts.

(j) That so much of paragraph VII of said bill as alleges that the property, property rights and remunerative business of Oklahoma Gas & Electric Company is taken without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States, should be stricken from said bill, as a mere conclusion of the pleader, unsupported by any facts; that it further appears in and by said bill that said conclusion is founded upon the illegal verbal contract set up in paragraph VII of said bill.

(k) That so much of paragraph VII of said bill as alleges that said order is contrary to Section 10 of Article I of the Constitution of the United States, should be stricken, as said verbal contract is an illegal conspiracy in restraint of trade or commerce within the State of Oklahoma, in violation of Section 11017 of the Compiled Oklahoma Statutes (1921).

(l) That it appears from paragraph VII of said bill that the Federal jurisdiction is founded on separate rights of the plaintiffs and not upon joint rights or titles, and that there is a misjoinder of plaintiffs in said bill.

(m) It appears from said Bill of Complaint that the plaintiffs are seeking an interlocutory injunction under Section 266 of the Judicial Code, 28 U. S. C. A. 380; that the three-judge court constituted under Section 266 is without jurisdiction to make any order or grant any relief as to this defendant.

[fol. 71] (n) That the following language contained in paragraph VIII of said bill should be stricken from the bill as a mere conclusion of the pleader, unsupported by any facts set up in the said bill.

"That said Wilson & Company, Inc., of Oklahoma, the Delaware corporation, plaintiff in said cause so filed in the District Court of Oklahoma County, is but the successor or assignee and stands in the shoes of said Wilson & Company, Inc. of Oklahoma, the Oklahoma corporation, and as such has only such rights as said Wilson & Company, Inc., the Oklahoma corporation, had and can claim no greater or further rights than said Oklahoma corporation has or had.

That for the reasons hereinbefore set forth said order is invalid and unenforceable, and because thereof said Wilson & Company, Inc., the Delaware corporation, as well as the Oklahoma corporation of the same name, does not have, and could not have, any possible cause of action against said Oklahoma Gas and Electric Company and Fidelity & Casualty Company of New York; that the commencement and prosecution of said action in said state court is an attempt on the part of the said Wilson & Company, Inc., the Delaware corporation, to enforce and make effective the said illegal and void order of the Corporation Commission of the State of Oklahoma and to obtain the same benefits and enjoyment therefrom and thereunder as if said order were valid and legal; that the commencement and prosecution of said action in said state court harasses and annoys complainants and was commenced, and is being prosecuted, for the purpose of harassing and annoying complainants and is an attempt on the part of said Wilson & Company, Inc., to obtain fruits and benefits under such illegal, invalid and void order of the same character, to the same extent, and of the same force and effect as if said order were in fact valid and legal."

[fol. 72] (o) It appears from said bill that the matters and things therein contained are not within the jurisdiction of this Court, for the reason that it is an attempt, by this proceeding, to enjoin, reverse, or modify the judgment of the Supreme Court of the State of Oklahoma. This Court is without power to enjoin the enforcement of said judgment of the State Supreme Court.

(p) It appears from said bill that all issues between the plaintiffs and this defendant were adjudicated in the proceedings before the Corporation Commission, and upon appeal to the Supreme Court of the State of Oklahoma, and

that the decision of the Supreme Court of Oklahoma is res adjudicata of all questions in controversy between this defendant and the plaintiffs.

Wherefore, defendant denies that the plaintiff is entitled to the relief prayed for in the Bill of Complaint, or any part thereof, or to any other relief against this defendant, and prays that the Bill of Complaint be dismissed with costs.

Oklahoma Packing Company, by W. R. Brown, C. D. Bennett, Its Attorneys.

[fol. 73] *Duly sworn to by W. W. Martin. Jurat omitted in printing.*

[fol. 74] Copy

EXHIBIT "A" TO ANSWER

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA.

Cause No. 7052

WILSON & COMPANY, INC., OF OKLAHOMA, Plaintiff,

vs.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, and Oklahoma Gas & Electric Company, a Corporation, Defendants

Supersedeas Bond

Know all men by these presents:

That the Oklahoma Gas and Electric Company, a corporation, as principal, and The Fidelity and Casualty Company of New York as surety, are held and firmly bound unto Wilson & Company, a corporation, in the sum of Twenty-five Thousand ($25,000.00) Dollars, for the payment of which well and truly to be made, we do hereby bind ourselves, our heirs and assigns.

The conditions of the foregoing obligations are such that, whereas, on the 13th day of April, 1926, the Corporation Commission of the State of Oklahoma entered its order #3388 in cause No. 7052; and

Whereas, the said Oklahoma Gas and Electric Company has appealed from the said Order of the Corporation Commission to the Supreme Court of Oklahoma; and

Whereas, pending said appeal, the said Corporation Commission did on the 26th day of April, 1926, by journal entry No. 1453 in cause No. 7052 suspend and supersede the said order No. 3388, pending the final termination of said appeal, upon the filing and approving of a bond in the sum of $25,000.00 with the Clerk of said Commission.

Now, therefore if the said Oklahoma Gas and Electric Company shall pay to the said Wilson & Company, a cor-
[fol. 75] poration, all amounts collected by said Oklahoma Gas and Electric Company in excess of the rate established by said Order No. 3388 for gas supplied said Wilson & Company, together with 6% per annum on any such amount, or amounts, from and after the 23rd day of April, 1926, pending the decision of the Supreme Court on said appeal, in event the said appeal shall be affirmed, in whole or in part or if the appeal should be dismissed then and in that event this obligation shall be null and void; otherwise to remain in full force and effect,

Oklahoma Gas and Electric Company, by J. F. Owens, Vice-President (Principal). The Fidelity & Casualty Co. of New York, by J. F. Butler, Resident Agent (Surety).

Approved and filed this — day of ——, 1926.

—— ——, —— ——, Corporation Commission.

[fol. 76] Copy

EXHIBIT "B" TO ANSWER

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 17,859

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and Oklahoma Natural Gas Company, a Corporation, Plaintiffs in Error,

vs.

WILSON & COMPANY, INCORPORATED, OF OKLAHOMA, THE STATE OF OKLAHOMA and the Corporation Commission of the State of Oklahoma, Defendants in Error

Additional or Supplemental Supersedeas Bond

Know all men by these presents:

That the Oklahoma Gas & Electric Company, a corporation, as principal and the Fidelity and Casualty Company of New York, as Surety, are held and firmly bound unto Wilson & Company, Incorporated, of Oklahoma, in the sum of Fifteen Thousand ($15,000.00) Dollars for the payment of which well and truly to be made we do hereby bind ourselves, our heirs and assigns.

The condition of the foregoing obligation is such that whereas, on the 13th day of April, 1926, the Corporation Commission of the State of Oklahoma entered its order No. 3388 in Cause No. 7052, and

Whereas, the said Oklahoma Gas & Electric Company has appealed from said order of the Corporation Commission to the Supreme Court of The State of Oklahoma, and

Whereas, pending said appeal the said Corporation Commission did on the 26th day of April, 1926, by Journal Entry No. 1453 in Cause No. 7052 suspend and supersede the said Order No. 3388, pending the final termination of said appeal upon the filing and approving of a bond in the sum of Twenty Five Thousand ($25,000.00) dollars with the Clerk of said Commission, which bond was executed, approved and filed, and

Whereas, Wilson & Company, Incorporated, of Oklahoma has filed an application in this cause asking that an

additional bond be given to further secure Wilson & Company, Incorporated, of Oklahoma on account of the additional potential liability incurred hereunder by reason of the passage of time and the said Oklahoma Gas & Electric Company having agreed to execute additional security.

Now, therefore, if the said Oklahoma Gas & Electric Company shall pay to the said Wilson & Company, Incorporated, of Oklahoma all amounts collected by said Oklahoma Gas & Electric Company in excess of the rate established by said Order No. 3388 for gas supplied said Wilson & Company, Incorporated, of Oklahoma, together with six (6%) per cent per annum interest on any such amount or amounts from and after the 23rd day of April, 1926, pending the decision of the Supreme Court on said Appeal, in the event the said appeal shall be affirmed in whole or in part, or if the appeal should be dismissed, then in that event this obligation shall be null and void, otherwise to remain in full force and effect.

This bond shall not be in lieu of the Twenty Five Thousand ($25,000.00) Dollar bond hereinbefore referred to but shall be an additional and supplemental security.

Oklahoma Gas and Electric Company, by —— ——.
The Fidelity & Casualty Co. of New York, by —— ——, Surety. —— ——, —— ——, Corporation Commission.

[fol. 77] Copy

EXHIBIT "C" TO ANSWER

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 17,859

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and OKLAHOMA NATURAL GAS COMPANY, a Corporation, Plaintiffs in Error,

vs.

WILSON & COMPANY, INCORPORATED, OF OKLAHOMA, THE STATE OF OKLAHOMA and the Corporation Commission of the State of Oklahoma, Defendants in Error

Additional or Supplemental Supersedeas Bond

Know all men by these presents:

That the Oklahoma Gas & Electric Company, a Corporation, as principal and the Fidelity and Casualty Company

of New York, as Surety, are held an firmly bound unto Wilson & Company, Incorporated, of Oklahoma, in the sum of Ten Thousand ($10,000.00) Dollars, for the payment of which well and truly to be made we do hereby bind ourselves, our heirs and assigns.

Dated this the 6th day of July, 1927.

The condition of the foregoing obligation is such that whereas, on the 13th day of April, 1926, the Corporation Commission of the State of Oklahoma entered its order No. 3388 in Cause No. 7052, and

Whereas, the said Oklahoma Gas & Electric Company has appealed from said order of the Corporation Commission to the Supreme Court of the State of Oklahoma, and

Whereas, pending said appeal the said Corporation Commission did in the 26th day of April, 1926, by Journal Entry No. 1453 in Cause No. 7052 suspend and supersede the said Order No. 3388, pending the final termination of said appeal upon the filing and approving of a bond in the sum of Twenty Five Thousand ($25,000.00) Dollars with the Clerk of said Commission, which bond was executed, approved and filed, and

Whereas, on or about the 27th day of December, 1926, said Oklahoma Gas & Electric Company executed and filed an additional bond in the penalty of Fifteen Thousand ($15,000.00) Dollars to further secure Wilson & Company, Incorporated, of Oklahoma on account of the additional potential liability incurred hereunder by reason of the lapse of time, and

Whereas, Wilson & Company, Incorporated, of Oklahoma has requested that additional bond be given to further secure it on account of the additional potential liability incurred hereunder by reason of the further lapse of time, and the said Oklahoma Gas & Electric Company having agreed to comply with said request of Wilson & Company to execute further and additional security;

Now therefore, if the said Oklahoma Gas & Electric Company shall pay to the said Wilson & Company, Incorporated, of Oklahoma all amounts collected by said Oklahoma Gas & Electric Company in excess of the rate established by said Order No. 3388 for gas supplied said Wilson & Company, Incorporated of Oklahoma, together with six (6%) per cent per annum interest on any such amount or amounts from and after the 23rd day of April, 1926, pending the

[fol. 78] decision of the Supreme Court of said Appeal, in the event the said appeal shall be affirmed in whole or in part, or if the appeal should be dismissed, then in that event this obligation shall be null and void, otherwise to remain in full force and effect.

This bond shall not be in lieu of the Twenty Five Thousand ($25,000.00) Dollars and the Fifteen Thousand ($15,000.00) Dollar bond, or either of them, hereinbefore referred to, but shall be additional and supplemental security.

Oklahoma Gas and Electric Company, by ——— ———, Vice-President (Principal). The Fidelity & Casualty Company of New York, by ——— ———, Resident Agent (Surety).

[File endorsement omitted.]

[fols. 79-103] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

ANSWER OF CORPORATION COMMISSION ET AL.—Filed June 9, 1932

The Corporation Commission of the State of Oklahoma, Paul Walker, C. C. Childers and E. R. Hughes, Members of said Commission, and J. Berry King, Attorney General of the State of Oklahoma, defendants in the above-entitled cause, answering the Bill of Complaint, do hereby adopt as their answer to the bill filed in this case, the answer made and filed for and on behalf of the defendant Oklahoma Packing Company.

The Corporation Commission of the State of Oklahoma, Paul Walker, C. C. Childers, E. R. Hughes, Members of said Commission; J. Berry King, Attorney General of the State of Oklahoma; by W. C. Lewis, Their Attorneys.

[File endorsement omitted.]

[fol. 104] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

OPINION ON APPLICATION FOR A TEMPORARY INJUNCTION AND MOTION TO DISMISS BILL—Filed Nov. 28, 1932

Before Cotteral, Circuit Judge, and Kennamer and Vaught, District Judges

Per CURIAM:

The plaintiffs brought a suit in this court against Wilson & Company, of Oklahoma, the Corporation Commission of Oklahoma, and the Attorney General of the state, to enjoin the enforcement of an order of the Commission, No. 3388, dated April 13, 1926, requiring the Oklahoma Natural Gas Company to supply gas to Wilson & Company at the city gate rate of 35¢ for the first 100,000 cu. ft. and 15¢ per thousand for the excess; provided the consumption should be of 15,000,000 cu. ft. per month, on the condition Wilson & Company purchase or install the service line to its plant.

There was an appeal from the order of the Commission to the state Supreme Court, supersedeas bonds were given by the Oklahoma Gas & Electric Company, and that court affirmed the order. 288 Pac. 316. The suit referred to followed in this court and it was dismissed on motion of the defendants, but that decree was reversed on appeal by the Circuit Court of Appeals. 54 F. (2d) 596. In that [fol. 105] case, the grounds of the original suit are set forth.

The plaintiffs later filed an amended and supplemental bill, seeking also an injunction before three judges against prosecution of a suit upon said supersedeas bonds by Wilson & Company of Oklahoma, the Delaware corporation, in the Oklahoma County state district court. Later, the suit in this court was dismissed by the plaintiffs without prejudice, because of the ruling there made that it had waived the right to a three-judge court by submitting the original motion for dismissal to the District Judge.

Thereafter, the present suit was commenced, asking for the same relief as in the original suit, and a temporary

injunction is now sought before this court, composed of three judges. That application has been submitted on the verified bill and affidavits, and stands for decision upon the several questions of fact and law presented thereon, and further the motion of Wilson & Company to dismiss the bill has been submitted. Of the contentions advanced by the defense, we notice those deemed serious or important.

It is insisted the suit may not be maintained against the Delaware corporation, because section 112, U. S. Code, section 51 Jud. Code, forbids a suit against any person in any other district than that whereof he is an inhabitant, when the suit is not founded on diverse citizenship. That section does not affect the jurisdiction of the court, conferred by section 24, Jud. Code, but pertains to venue, which may be waived. Lee v. Chesapeake & Ohio Ry., 260 U. S. 653, 655. But the Delaware corporation became, for the purpose of suit, an inhabitant of the western district of Oklahoma, where it proceeded to buy and conduct a packing plant, in compliance with the state law. Dodge v. Patten, 60 F. (2d) 676.

[fol. 106] The defense seeks a review of the decision of the circuit court of appeals that the order of the Commission was upheld by the state supreme court only with legislative force. We decline to reconsider that question, regarding it as settled in this case.

The jurisdiction of this court is challenged, because the bill does not allege the requisite amount to be in dispute and the Oklahoma Gas & Electric Company makes no complaint under the federal constitution or laws. But both were parties to the proceeding before the Commission. The order of the Commission required certain service by the Oklahoma Natural Gas Company and deprived the Oklahoma Gas & Electric Company of the patronage of Wilson & Company. In seeking relief where both companies were thus concerned, we think the averment of the jurisdictional amount was sufficient. And a federal controversy was alleged because the order of the Commission if upheld requires a taking of the property of both, without due process of law.

The bill is assailed as multifarious in seeking distinct relief by the two plaintiffs. But both are interested as the order adversely and directly affects them. And the objection is one of inconvenience. Graves v. Ashburn, 215

U. S. 331. Separate suits are quite unnecessary and the whole controversy should be heard, as the issues are not complex and they may be appropriately and conveniently determined in one suit.

The defense asserts that the suit in the state court may not be enjoined, under the doctrine that suits for the same relief in the federal and state courts may proceed independently, unless the custody of property is involved. That rule is no longer in doubt. Grubb v. Public Utilities Com., 281 U. S. 470, 476. But it is not here involved. The remedy plaintiffs seek is to enjoin the prosecution of the state court suit, because it was brought for the enforcement of bonds given to stay its order, alleged to constitute a taking of property without due process of law.

The power of the Commission to make the order in ques- [fol. 107] tion depended upon the fact that the Oklahoma Natural Gas Company had professed to serve gas to customers in a similar situation with Wilson & Company. The finding of the Commission was it is serving large industrial users of gas near other large cities, particularly near Tulsa and Sapulpa, and before the city gate was established it served gas to users within that gate, outside of Oklahoma City. If the Oklahoma Natural Gas Company had professed to render service to such users as Wilson & Company, the Commission was authorized to require it in favor of that company. Oklahoma Natural Gas Company v. Corporation Commission, 211 Pac. 401; In re Vance, and Oklahoma Natural Gas Co. v. Scott et al., 115 Okla. 8, 241 Pac. 164, 51 C. J. 7. A public utility is not entitled to abandon a public service without leave of the state. 51 C. J. 8. But the plaintiffs denied they ever made such profession, thereby challenging the foundation of the order. In arriving at the facts, the findings of the Commission are to be regarded as presumably correct, until clearly overcome. 51 C. J. 66.

The contention that the Oklahoma Natural Gas Company served gas in Oklahoma City is based on the theory of agency, through the local distribution system of the Oklahoma Gas & Electric Company. The former furnished the gas to the latter, under a contract of May, 1907, for a percentage of collections realized by the latter company. The latter at one time made that claim. Oklahoma Gas & Electric Company v. Oklahoma Natural Gas Company, 85

Okl. 25, 205 Pac. 768. But practically the contract was merely a means of effecting payment for the gas. As the Oklahoma Natural Gas Company did not at the time have a franchise to distribute gas in Oklahoma City, there could be no legitimate contract of agency. Besides, the contract was canceled by the Commission on June 25, 1921. Ex. b, plaintiffs' bill. And in lieu of it, the Commission, in 1921, fixed the rate to be charged by the Oklahoma Natural Gas Company at the city gate, or measuring station, located near but outside of the city. Ex. b, supra.

[fol. 108] We advert to the facts respecting the service by the Oklahoma Natural Gas Company of gas near the city. The packing plant of Wilson & Company is located in the area within the city gate but outside of the city. The Oklahoma Natural Gas Company and the Oklahoma Gas & Electric Company orally agreed in 1921 the Oklahoma Gas & Electric Company was to supply all gas to consumers within the city gate, as long as it distributed gas in Oklahoma City and took it from the Oklahoma Natural Gas Company. The Oklahoma Natural Gas Company was theretofore serving customers in the area later located within the city gate. It has since been serving gas to large industrial users near large cities, particularly Tulsa and Sapulpa. Pursuant to the agreement, it has since never served any customer within the city gate, never served gas to Wilson & Company, and it has served only such customers as it saw fit from its main line leading to Oklahoma City.

In 1921, the Oklahoma Natural Gas Company constructed the measuring station at the city gate, and thereafter all gas was measured there and delivered to and paid for by the Oklahoma Gas & Electric Company on a volume basis, pursuant to a rate fixed by the Commission. The Oklahoma Natural Gas Company sold to the Oklahoma Gas & Electric Company a short service pipe line, through which the former delivered the gas to Wilson & Company, for which the Oklahoma Gas & Electric Company charged a profit of 5¢ per thousand cubic feet. The gas used by Wilson & Company has always been sold to it by the Oklahoma Gas & Electric Company, continuing off and on since 1916.

The affidavits of plaintiffs assert that the Oklahoma Natural Gas Company never served any customer situated

as is Wilson & Company. But it was a conclusion, and no definite facts were set forth on which that claim was based. We have therefore found its customers near the cities, to whom we have referred, were industrial customers similar to Wilson & Company.

[fols. 109-113] We regard it as unimportant that the company, as it agreed, after the city gate near Oklahoma City was established, served gas to customers located only outside that gate. The test is whether its sales were to industrial customers similarly situated with Wilson & Company, in any locality. Finding they were, we hold the Commission had the power to make the order in question on that ground.

The agreement of the Oklahoma Natural Gas Company and the Oklahoma Gas & Electric Company is assailed as being contrary to public policy and invalid, in being made for the abandonment of service between competing companies near Oklahoma City. The Oklahoma Natural Gas Company under the agreement surrendered the service within the city gate to the Oklahoma Gas & Electric Company. The result was to enable that company to buy the gas and sell it to Wilson & Company at a profit over the city gate rate. The agreement must therefore be condemned as impairing the discharge of a duty of the Oklahoma Natural Gas Company and its successor to the public. Oklahoma Gas & Electric Co., v. Oklahoma Natural Gas Co., 85 Okl. 25, 205 Pac. 768; Thomas v. Railroad Co., 101 U. S. 71; Gibbs v. Baltimore Gas Company, 130 U. S. 396. We conclude that the Oklahoma Natural Gas Company and later its successor were bound to continue the public service it was professing to render near Oklahoma City when the agreement was made, and that the Commission had the power to make and enforce that service at the city gate rate to Wilson & Company by the order in controversy.

The motion to dismiss the bill must be overruled because a cause of action is pleaded. But the application for a temporary injunction must be denied. Orders will be entered accordingly.

[File endorsement omitted.]

[fol. 114] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

ORDER DENYING APPLICATION FOR A TEMPORARY INJUNCTION—Filed Nov. 28, 1932

The application of the plaintiffs for a temporary injunction, enjoining pendente lite the enforcement of the order of the Corporation Commission of Oklahoma, Number 3388, dated April 13, 1926, and the prosecution of the suit brought in the District Court of Oklahoma County, Oklahoma, by Wilson & Company, upon the supersedeas bonds given in the proceeding on appeal from the said order to the Supreme Court of Oklahoma, comes on to be determined, after the said application was heard upon the bill and affidavits of the parties and thereafter fully argued, and pursuant to the submission thereof, it is this day

Ordered that said application be and it is denied. The plaintiffs thereupon except to said order.

November 28, 1932.

John H. Cotteral, Circuit Judge. F. E. Kennamer, District Judge. Edgar S. Vaught, District Judge.

[File endorsement omitted.]

[fol. 115] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OVERRULING MOTION TO DISMISS BILL—Filed Nov. 28, 1932

The motion of the defendants to dismiss the bill of plaintiffs comes on to be determined, after the same was fully argued by counsel, and pursuant to the submission thereof, and the court, being fully advised, it is this day

Ordered that said motion be and the same is overruled. The defendants thereupon except to said order.

November 28, 1932.

John H. Cotteral, Circuit Judge. F. E. Kennamer, District Judge. Edgar S. Vaught, District Judge.

[File endorsement omitted.]

[fol. 116] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

ANSWER OF WILSON & CO., INC., OF OKLAHOMA—Filed Dec. 1, 1932

Wilson & Co., Inc. of Oklahoma, a Delaware Corporation, defendant, reserving to itself the benefit of its objection to being sued in the Western District of Oklahoma, answering the Bill of Complaint, does hereby adopt as its answer to the bill filed in this cause, the answer made and filed for and on behalf of the defendant Oklahoma Packing Company.

Wilson & Co., Inc., of Oklahoma, by Bennett & Bennett, W. R. Brown, Its Attorneys.

[File endorsement omitted.]

[fol. 117] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

SUPPLEMENTAL ANSWER OF WILSON & CO., INC., OF OKLAHOMA, A DELAWARE CORPORATION, TO THE BILL OF COMPLAINT—Filed May 19, 1933

Now comes the defendant, Wilson & Co., Inc. of Oklahoma, a Delaware corporation, and by leave of court first had and obtained, files this, its Supplemental Answer to the Bill of Complaint of the plaintiffs filed herein and alleges:

1. Since the filing, on or about the 9th day of June, 1932, of this defendant's original answer to said bill of complaint, the action brought by this defendant in the District Court of Oklahoma County, Oklahoma, against the complainant herein, Oklahoma Gas & Electric Company, and Fidelity & Casualty Company of New York, referred to in paragraph VIII of the bill of complaint, has been brought on for trial before the District Court of Oklahoma County, a jury being waived by both parties, and the court has

made its findings of fact and conclusions of law and en-
[fol. 118] tered judgment thereon in favor of this defendant on 5th day of April, 1933; that said judgment is res judicata of all matters and things alleged in the bill of complaint touching this defendant.

Wherefore, this defendant prays judgment that the bill of complaint be dismissed as to this defendant with costs to this defendant.

Bennett & Bennett, W. R. Brown, Solicitors for Defendant, Wilson & Co., Inc., of Oklahoma, a Delaware Corporation.

[File endorsement omitted.]

[fol. 119] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1357. Equity

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation; Oklahoma Natural Gas Company, a Corporation; W. T. Phillips, Jr.; H. J. Crawford, J. V. Ritts, Leonard C. Ritts, R. W. Hannan, A. W. Leonard, and R. C. Sharp, the Directors of the Oklahoma Natural Gas Company, a Dissolved Corporation, and Oklahoma Natural Gas Corporation, Complainants,

vs.

OKLAHOMA PACKING COMPANY, Formerly WILSON & CO., INC., OF OKLAHOMA, an Oklahoma Corporation; Wilson & Company, Inc., of Oklahoma, a Delaware Corporation; The Corporation Commission of the State of Oklahoma, Paul Walker, Chairman, C. C. Childers and E. R. Hughes, Members of Said Commission, and J. Berry King, Attorney-General of the State of Oklahoma, Defendants

R. M. Rainey, Streeter B. Flynn, I. J. Underwood, Calvin Jones, R. M. Campbell, F. G. Anderson, Geo. M. Green, and Allen, Underwood & Canterbury, for Complainants.

C. D. Bennett and W. R. Brown, for defendants.

OPINION—Filed Sept. 22, 1933

Before McDermott, Circuit Judge, and Kennamer and Vaught, District Judges

McDERMOTT, Circuit Judge, delivered the opinion of the court:

[fol. 120] At the bottom of this controversy is the question of whether an order made by the Corporation Commission of Oklahoma in 1926, requiring the Oklahoma Natural Gas Company to serve Wilson & Company, Inc., with gas, is valid. The validity of the order, in turn, depends upon the question of whether the Oklahoma Natural Gas Company had professed or undertaken to serve Wilson & Company, Inc., or others similarily situated. The parties agree, and the law undoubtedly is, that no power resides in the state to compel a utility to furnish service to that part of the public which it has not professed or undertaken to serve. The controversy narrows to the question of whether the Oklahoma Natural Gas Company had undertaken to serve others of the public situated similarly to Wilson & Company, Inc. While the order of the Commission, sustained by the Supreme Court of Oklahoma acting in its legislative capacity, is presumptively correct, the plaintiffs are entitled to a judicial review of both the facts and the law on this constitutional question.

The defendants contend that we are precluded from a review of that order because the question has become moot. We do not agree. It is true that the order has been displaced by other rate orders, and is not presently effective. It is likewise true that the order was displaced prior to the affirmance thereof by the Supreme Court of Oklahoma, and that it was lawfully superseded pending such review. The plaintiffs are therefore not subject to any of the penal provisions of the Oklahoma statutes for violating a valid order, and there is no threat by the state officials of any effort to impose such penalties. There is, therefore, no basis for any injunctive relief against the state officials. Ex Parte La Prade, 289 U. S. 444, 458. However, one of the defendants, Wilson & Company, Inc., is vigorously asserting rights predicated upon the validity of such order. While this is the only spark of life left in the order, the controversy cannot be said to be moot as long

as it remains unextinguished. Oklahoma Operating Com-
[fol. 121] pany v. Love, 252, U. S. 331.

But this action in equity cannot be maintained if there is an adequate remedy at law. Sec. 267, Jud. Code, 28 U. S. C. A. § 384; Mathews v. Rodgers, 284 U. S. 521.

It seems apparent that the plaintiffs herein are afforded complete protection by the defense in the action at Law. It was suggested, upon argument, that the legal defense was not adequate because under the constitution of Oklahoma, the state district court had no jurisdiction judicially to determine the validity of the order. The state district court has ruled otherwise, and has judicially determined the validity of the order. The plaintiffs are entitled, in some court, to a judicial determination of the validity of the order. It has had that determination, and there is no reason to believe that it will be denied a judicial review by the Supreme Court of Oklahoma. The Oklahoma Gas & Electric Company, being entitled to and having interposed the invalidity of the order in defense of the action at law, has no ground for asking equity again to pass upon its validity. While the Oklahoma Natural Gas Company is a party plaintiff in this case, and is not a party defendant in the state court suit, the record conclusively demonstrates that it has no substantial interest in the controversy.

It is said that equity may proceed, even if an order has been vacated, if it appears that its vacation was to avoid a judicial determination of its validity; or if a multiplicity of suits by consumers may follow notwithstanding its vacation. This may be conceded; but no such situation is present here. To enjoin the continuance of a single action at law is the only thing sought to be accomplished by this equitable action. We are reminded that equity may proceed to adjudicate a controversy, notwithstanding that the specific relief sought has been frustrated by the acts of the parties pendente lite. True enough, but here the defendant took no step to frustrate the action of this court; having first commenced an action at law to recover excess pay-
[fol. 122] ments made to the Oklahoma Gas and Electric Company, and this court having declined to enjoin the prosecution of that suit, it proceeded to judgment in an orderly way. The force of that judgment cannot be impaired by the mere pendency of an action to enjoin the prosecution.

Considerations of comity support the conclusion reached. The action in the state court to enforce the order was brought prior to the present action in this court to enjoin its enforcement. Both actions were in personam, and could and did proceed concurrently. In due course, the action in the state court proceeded to a trial lasting for several days. It has rendered its considered judgment, and the matter is now pending before the Supreme Court of Oklahoma. The evidentiary facts, as found by that court, are substantially as stipulated by counsel herein. The question will ultimately be decided by the Supreme Court of the United States, either on appeal from this court or from the Supreme Court of Oklahoma. Since the state court case has gone to judgment, the only effective order which this court could make if it reached a conclusion contrary to that court, would be to enjoin the enforcement of that judgment and any further proceedings in that court. The more orderly procedure is for the plaintiffs to review the correctness of that judgment in the Supreme Court of Oklahoma, and if then dissatisfied, to invoke the jurisdiction of the Supreme Court of the United States.

The bill will be dismissed at the cost of the plaintiffs.

Sep. 22, 1933.

Geo. T. McDermott, United States Circuit Judge.
F. E. Kennamer, United States District Judge.
Edgar S. Vaught, United States District Judge.

[File endorsement omitted.]

[fol. 123] In United States District Court for the Western District of Oklahoma

[Title omitted]

Findings of Fact on Final Hearing—Filed Sept. 22, 1933

I

We find the following facts in accord with the written stipulation of the parties:

1

At all the times mentioned in complainants' petition, the Oklahoma Natural Gas Company was a corporation en-

gaged in the business of the production of, transportation and sale of natural gas as a public utility, supplying gas at various towns and cities in Oklahoma for domestic and industrial consumption. It held franchises for local distribution in a few towns and cities, but none in Oklahoma City.

Wilson & Company, Inc., is a corporation operating a manufacturing plant situated in Oklahoma City southwest of and outside the corporate limits of the city of Oklahoma [fol. 124] City. The Oklahoma Gas and Electric Company is a corporation, at all the times herein involved, engaged in the distribution of gas in Oklahoma City to domestic and industrial consumers in Oklahoma City and immediate vicinity, and operating under a franchise from the city. Prior to the promulgation by the Corporation Commission of what is known as the gate rate order in June, 1921, the Oklahoma Natural Gas Company was supplying the Oklahoma Gas and Electric Company with natural gas at Oklahoma City under contracts and arrangements on the percentage basis.

2

That at the time of making said gate rate order, and for some time prior thereto, there were only two reducing stations at, or through which the gas was reduced from high pressure to low pressure and delivered by said Oklahoma Natural Gas Company to the Oklahoma Gas and Electric Company, one of such stations being located at Thirty-sixth Street and Santa Fe Avenue, and the other being located at Pennsylvania and Reno Avenues, both of which stations were then outside the city limits of Oklahoma City, both of same being northerly or north of the city. All of the gas passing through the reducing station at Thirty-sixth Street and Santa Fe Avenue was gas from the north of Oklahoma City produced in the fields known as the Cushing, Kellyville, Depew and other fields in that general locality, which points are north and east of Oklahoma City, and was transmitted by the pipe lines of the Oklahoma Natural Gas Company. During the year 1919, the Oklahoma Natural Gas Company built a transmission line to the gas field known as the Chickasha field near Chickasha, Oklahoma, southwest of Oklahoma City, and said line extended from said [fol. 125] Chickasha field to Independence Avenue in Oklahoma City and thence proceeded north on said Independence Avenue nearly a mile west of the packing plant of

Wilson & Company, Inc., extending on to Reno Avenue, thence east on that avenue to the reducing station at Pennsylvania and Reno, said Reno Avenue being something over a mile north of said packing plant. The Oklahoma Natural Gas Company in 1921, constructed a six-inch gas line connected with its system and extending east and west through Ash Avenue west of Oklahoma City, and located about five or six hundred feet south of the engine-room of Wilson & Company, Inc.; said gas line in Ash Street extended 4,500 feet east of Wilson & Company, Inc.'s plant, and connected with a meter or measuring station located at or immediately adjacent to the intersection of Hickory Street and Agnew Street, and within 200 feet of the city limits of the city of Oklahoma City; this gas line was constructed for use in such emergency as might arise by the washing out at the river crossings of its line on Independence Avenue; the said measuring station located at or near the intersection of Hickory Street and Agnew Street, remained in this location throughout the month of September, 1924, and for some time thereafter; in September, 1924, Agnew Street was, and still is, the city limits of Oklahoma City; the plant of Wilson & Company, Inc., of Oklahoma, was, in September, 1924, and now is, located immediately west of the intersection of Agnew and Hickory Streets, and approximately 1,500 feet outside the city limits of Oklahoma City.

The defendant, Oklahoma Gas and Electric Company, desired to serve gas to Wilson & Company, Inc., for fuel purposes and made an arrangement or agreement with the Oklahoma Natural Gas Company, in 1924, at some date fol- [fol. 126] lowing the month of September, to move its measuring station or meter from its location at or near the intersection of Agnew and Hickory Streets, to some point west of the plant of Wilson & Company, Inc., of Oklahoma, and the said measuring station was finally located at or near the intersection of Ash and May Avenues, approximately one-third of a mile west of Wilson & Company, Inc.'s plant, and approximately 3,000 feet west of Agnew Street, the city limits of Oklahoma City. It was at first understood between the Oklahoma Natural Gas Company and the Oklahoma Gas and Electric Company that the measuring station should be located just south of the Wilson & Company, Inc., plant at the point where Wilson & Company, Inc., were to be served and the Oklahoma Gas and Electric Company on

April 3, 1925, purchased that part of the Oklahoma Natural Gas Company's line between such point and the measuring station at Hickory Street. The Oklahoma Gas and Electric Company constructed a service line extending from the main on Ash Avenue, to the boiler-room of Wilson & Company, Inc., and the necessary meters and measuring devices, a distance of about 450 feet:

3

Prior to the making of the gate rate order in 1921, the Oklahoma Gas and Electric Company had been supplying gas to users at Oklahoma City, both within and without the city limits. When the gate rate order was made and the Oklahoma Natural Gas Company was required to put in gates and measures, sell and deliver the gas to the Oklahoma Gas and Electric Company at said gates, there were several consumers of gas outside of and beyond the location of the gate stations, who had been supplied by the Oklahoma Gas and Electric Company, and in carrying out said order, it was agreed between the Oklahoma Gas and Electric Company and the Oklahoma Natural Gas Com- [fol. 127] pany, with the assent of the Corporation Commission that the Oklahoma Natural Gas Company could, if it desired, continue to supply gas to such consumers outside the gate, and all or some of them were continued to be so supplied after said gate order by the Oklahoma Natural Gas Company. During 1924-1925-1926, the Oklahoma Natural Gas Company served gas to Lorris E. Cobb, R. S. Schuneman and Billie Gregg, outside of the city limits and outside the measuring stations. However, each of them consumed less than one hundred thousand cubic feet per month. No other consumers, except Billie Gregg, were furnished gas by the Oklahoma Natural Gas Company outside the said gates, except consumers over whose land its pipe line was laid, and except certain domestic customers who were outside the city gates or measuring stations on the lines of the Oklahoma Natural Gas Company and were being served by the Oklahoma Gas and Electric Company at the time of the gate rate order. The Oklahoma Natural Gas Company never served consumers inside of the gates whose gas had been measured and charged to the distributing company. It had no desire to furnish any gas in competition with its biggest customer, the Oklahoma Gas

and Electric Company, who was purchasing all its gas from the Oklahoma Natural Gas Company.

4

In September, 1924, the Oklahoma Natural Gas Company made its application to the Corporation Commission of the State of Oklahoma, to establish a reduction in rates for gas for industrial purposes; the Corporation Commission acted upon its application and by Journal Entry No. 1203, in Cause No. 6030, authorized the Oklahoma Natural Gas Company to establish rates for industrial gas of thirty-eight cents per thousand cubic feet, for the first 100,000 [fol. 128] cubic feet, per month, and fifteen cents per thousand cubic feet, for all gas in excess of the first 100,000 cubic feet, per month, provided there was a minimum consumption of 30,000,000 cubic feet per month, per customer; said rates were to apply to consumers located outside of the city limits of the cities served by the Oklahoma Natural Gas Company; the Corporation Commission did, by the Journal Entry No. 3276, in Cause No. 5965, authorize the Oklahoma Natural Gas Company to reduce its rates to thirty-five cents per thousand cubic feet for the first 100,000 cubic feet, per month, and fifteen cents per thousand cubic feet, for all in excess of the first 100,000 cubic feet, per month, where the consumer used a minimum of 15,000,000 cubic feet per month; said rate became effective on January 1, 1926; it is admitted that the Oklahoma Natural Gas Company did, from and after January 1, 1926, furnish gas to Producers & Refiners Corporation, located immediately outside of Tulsa, Oklahoma, at the rate of thirty-five cents per thousand cubic feet, for the first 100,000 cubic feet, per month, and fifteen cents per thousand cubic feet for all over 100,000 cubic feet; that the consumption of the Producers & Refiners Corporation during the months of January, to and including the month of September, 1926, was from 45,898,000 cubic feet, to 65,287,000 cubic feet. Also the Oklahoma Natural Gas Company furnished industrial gas to several other industrial users at Sapulpa and Tulsa. The Oklahoma Natural Gas Company had franchises and owned and operated the gas distribution systems in the cities of Sapulpa and Tulsa during all of the times herein involved.

5

In December, 1924, the Oklahoma Gas and Electric Company began serving gas to Wilson & Company, Inc., and built a service line from the six-inch line in Ash Street to [fol. 129] Wilson & Company, Inc.'s boilers. April 13, 1926, upon complaint of Wilson & Company, Inc., the Corporation Commission promulgated its Order No. 3388, which order required the Oklahoma Natural Gas Company to serve Wilson & Company, Inc., with gas at its industrial rate. Both the Oklahoma Gas and Electric Company and the Oklahoma Natural Gas Company appealed to the Supreme Court and the Oklahoma Gas and Electric Company gave bond to supersede the execution of the order and supersedeas was ordered upon filing and approving bonds.

6

In the month of September, 1926, the Oklahoma Natural Gas Corporation purchased the natural gas system of Oklahoma Natural Gas Company and continued thereafter to operate the transmission and distribution systems in Oklahoma. As of March 1, 1928, the Oklahoma Natural Gas Corporation purchased the natural gas distributing systems of the Oklahoma Gas and Electric Company in the various cities and towns in Oklahoma, including Oklahoma City, and thereafter operated said distributing systems in said cities and towns. The Oklahoma Natural Gas Corporation concurrently, with the commencement of its operations of the gas distributing systems in said cities and towns previously owned and operated by Oklahoma Gas and Electric Company, placed in effect in said cities and towns its industrial gas rates that had theretofore been effective in other cities and towns, and on the general system owned and operated by Oklahoma Natural Gas Corporation. The Oklahoma Natural Gas Corporation after March 1, 1928, furnished gas to Wilson & Company, Inc., for boiler fuel purposes at its established rate of thirty-five cents for the first 100,000 cubic feet per month, and fifteen cents per 1,000 cubic feet, for all in excess thereof, during the months that the total consumption exceeded 15,000,000 cubic feet.

[fol. 130]

7

It is agreed that Billie Gregg's place where the Oklahoma Natural Gas Company served gas after the gate rate order

was located outside and beyond the city measuring stations and was approximately three miles north of Wilson & Company, Inc.'s plant and approximately a mile west of the city limits of Oklahoma City.

8

It is agreed that gas was furnished by Oklahoma Natural Gas Company to Oklahoma Gas and Electric Company through the measuring station located near the intersection of Hickory and Agnew Streets in the following quantities and during the following months, to wit:

January, 1922	563,000 cubic feet
October, 1923	3,467,000 " "
November, 1923	7,879,000 " "

and that no other gas was measured through said measuring station from the date of its construction up to the date of its discontinuance. It is agreed that the first gas was metered through the measuring station constructed at Ash Street and May Avenue by Oklahoma Natural Gas Company to Oklahoma Gas and Electric Company in the month of December, 1924. Wilson & Company, Inc., intermittently purchased gas from the Oklahoma Gas and Electric Company for use for fuel under its boilers from the year 1916 or 1917, but did not purchase from the Oklahoma Gas and Electric Company, or use gas as fuel for its boilers, from the 14th day of May, 1923, until it commenced again in December, 1924. It is agreed, however, that from the date of [fol. 131] the gate rate order in the year 1921, at or about which time the measuring stations were installed, Wilson & Company, Inc., purchased gas for miscellaneous incidental purposes at its plant from the Oklahoma Gas and Electric Company during each and every month up until December, 1924, and during some of said months purchased additional supplies of gas for fuel under its boiler plant.

H

We find, in accord with paragraph 7 of the bill, admitted by paragraph 17 of the answer, that prior to and at the time of the making of the order complained of herein there was an oral contract existing between Oklahoma Gas and Electric Company and Oklahoma Natural Gas Company made four or five years prior thereto and extending so long as

said Oklahoma Gas and Electric Company should operate its distribution system and purchase gas from said Oklahoma Natural Gas Company, providing that as to consumers of gas within the city gates or measuring stations so situated as said Wilson & Company, Inc., with reference to Oklahoma City, said city gates and the respective properties of Oklahoma Gas and Electric Company and Oklahoma Natural Gas Company, that such consumers would be supplied and furnished gas by the Oklahoma Gas and Electric Company and would not be furnished and supplied gas by the Oklahoma Natural Gas Company.

III

Prior to 1924 such gas as was used by Wilson & Company, Inc., was purchased from the Oklahoma Gas and Electric Company and delivered through a line extending from the measuring stations located at Reno and Pennsylavnia and Thirty-sixth and Santa Fe. When Wilson & Company, [fol. 132] Inc., resumed the use of gas for fuel in 1924, it was found that such line was not in good condition, and in order to save the expense of replacing it, the arrangement was made as set out in the last paragraph of finding I-(2). A verbal agreement was made that the Oklahoma Gas and Electric Company should purchase the portion of the emergency line west of the new measuring station and now covered by the purchase of April 3, 1925, if a price could be later agreed upon.

IV

The Oklahoma Natural Gas Company has not served, nor professed to serve, gas to consumers upon the lines of the Oklahoma Gas and Electric Company located within the city gates, that is, beyond the point where the gas sold by the Oklahoma Natural Gas Company to the Oklahoma Gas and Electric Company is measured. The Oklahoma Natural Gas Company sold no gas to Wilson & Company, Inc., prior to the order complained of.

V

There was no contract between the Oklahoma Gas and Electric Company and Wilson & Company, Inc., to furnish gas for any particular period in the future, but if the order complained of had not been made, it could reasonably be

expected that Wilson & Company, Inc., would have continued to purchase gas from the Oklahoma Gas and Electric Company at a profit to it of approximately five cents a thousand cubic feet.

VI

The rates charged by the Oklahoma Natural Gas Company to the Oklahoma Gas and Electric Company for gas delivered to it, and the rates charged by the Oklahoma Gas [fol. 133] and Electric Company to Wilson & Company, Inc., were those prescribed by the Corporation Commission of Oklahoma.

VII

The order herein sought to be enjoined became inoperative on March 1, 1928 (while the petition to review was pending in the Supreme Court), when the properties of the Oklahoma Gas and Electric Company were purchased by the Oklahoma Natural Gas Corporation, and new industrial rates were put into effect. There is no suggestion in the record of any intention on the part of any of the public officials of Oklahoma to undertake to impose any statutory penalties for failure to comply with the order while it was in effect. No such statutory penalties could be imposed because the order was legally superseded until it was displaced by the new rates. The only consumer affected by the order is Wilson & Company, Inc.

VIII

Both the Oklahoma Gas and Electric Company and the Oklahoma Natural Gas Company petitioned the Supreme Court of Oklahoma for a review of the order of April 13, 1926, and pending such review, the order was superseded as provided by the statutes of Oklahoma. Such review by the Supreme Court was legislative and not judicial. On April 29, 1930, the Supreme Court of Oklahoma affirmed the order of the Corporation Commission.

IX

On December 3, 1931, Wilson & Company, Inc., brought an action at law in the District Court of Oklahoma County, Oklahoma, against the Oklahoma Gas and Electric Company and the Fidelity & Casualty Company of New York,

[fol. 134] upon bonds given to supersede the order of the Corporation Commission pending review, and upon an alleged oral agreement of the Oklahoma Gas and Electric Company to repay to Wilson & Company, Inc., any sums collected in excess of those which would have been payable if the order had not been superseded. In its answer in that case, the Oklahoma Gas and Electric Company alleged (a) that the order of the Corporation Commission was legislative in character, as was the decision of the Supreme Court of Oklahoma affirming the same, and that under the Constitution and Laws of the United States, the defendant had the right to have a judicial decision of the court upon both the law and the facts affecting the validity of said order; and (b) that the order was null and void for substantially the same reasons as set out in the bill filed in this action. There was a four day trial in the state court, on the issues so joined, and on April 5, 1933, judgment was entered by that court in favor of the plaintiff. Findings of the evidentiary facts, substantially as stipulated by the parties herein, were made by that court. The court concluded as a matter of law that it had jurisdiction and that it was its duty to determine judicially the validity of the order of the Corporation Commission now under attack.

It thus appears, and we find, that the validity of such order has been judicially determined by the District Court of Oklahoma County, Oklahoma. An appeal from said judgment to the Supreme Court of Oklahoma has been perfected, and the judgment superseded pending such appeal.

[fol. 135] Conclusions of Law

I

The order under attack having been lawfully superseded pending a legislative review by the Supreme Court, neither of the plaintiffs is subject to any penalties prescribed by statute for violation of the order while it was so superseded. There is no evidence that the state officials, defendants herein, have threatened, or intend, to undertake to subject the plaintiffs to any of such penalties. There is, therefore, no ground for injunctive relief against the state officials.

II

The only liability to which the plaintiffs, or either of them, may now be subjected, on account of such order is

the repayment of a single consumer, Wilson & Company, Inc., of the excess amounts collected by the Oklahoma Gas and Electric Company over the rates prescribed by such order. Such possible liability attaches only to the Oklahoma Gas and Electric Company, which collected and retained such excess amounts.

III

The validity of the order may be and has been interposed as a defense to an action at law to recover such excess amounts. There is, therefore, an adequate remedy at law.

Geo. T. McDermott, United States Circuit Judge.
F. E. Kennamer, United States District Judge.
Edgar S. Vaught, United States District Judge.

[File endorsement omitted.]

[fol. 136] In United States District Court for the Western District of Oklahoma

[Title omitted]

Petition for Rehearing—Filed Oct. 6, 1933

Come now the complainants and move the court to rehear and reconsider its findings and decision herein, for the reasons herein set forth.

As we understand the holding herein, it is based principally upon the fact that the Oklahoma Packing Company had brought its action against the Oklahoma Gas & Electric Company, arising out of and based upon the order of the Corporation Commission, in the state court and had already obtained judgment in the state court for a sum of money against the Oklahoma Gas & Electric Company and its surety; that the Oklahoma Gas & Electric Company had defended in the state court action, among other grounds, upon the ground of the invalidity of the order of the Corporation Commission, such ground of invalidity thereof set forth in said defense in the state court case being the same or substantially the same as the ground of invalidity thereof set forth in this action, from which situation, as we understand it, this court concludes that there was an adequate remedy at law and such remedy still continues by

reason of the appeal to the Supreme Court of the state from said state court judgment. We believe the court overlooked the fact that the adequate remedy at law which will defeat the equity jurisdiction of the federal court is an adequate remedy at law on the law side of the federal court and not in some other court.

This court as a federal equity court has jurisdiction to enjoin proceedings in the state court to enforce local statutes which are repugnant to the Constitution of the United States.

[fol. 137] Ex Parte Young, 209 U. S. 123.
Truax v. Raich, 239 U. S. 33.
Missouri v. C. B. & Q. R. R. Co., 241 U. S. 533.
Terrace v. Thompson, 263 U. S. 197.

Regulations made under the authority of a state enactment are state statutes within the contemplation of the above cases.

Smith v. Ames, 169 U. S. 466.
Prentis v. Atlantic Coast Line Co., 211 U. S. 210.

A suit by a customer to recover what he claims he is entitled to arising out of the Commission's order is an enforcement of the order of the Commission as much so and of equal force as the enforcement of penalties for violation of the order. Such is the holding in the case of Oklahoma Operating Company v. Love, 252 U. S. 331 at page 337-338, as follows:

"The suit should, therefore, proceed for the purpose of determining whether the maximum rates fixed by the Commission are, under present conditions, confiscatory. If they are found to be so, a permanent injunction should issue to restrain their enforcement either by means of penalties or otherwise, as through an assertion by customers of alleged rights arising out of the Commission's orders."

It is, of course, well settled that the remedy at law which will defeat the federal court's equity jurisdiction must be an adequate remedy at law on the law side of the federal court. In Risty v. C. R. I. & P. Ry. Co., 270 U. S. 378, at page 388 the court says:

"The remedy by appeal to the state court under Section 8469 does not appear to be coextensive with the relief which equity may give. In any event, it is not one which may

be availed of at law, in the federal courts, and the test of equity jurisdiction in a federal court is the inadequacy of the remedy on the law side of that court and not the inadequacy of the remedies afforded by the state courts."

There was and is no possible action which the complainants here could have brought on the law side of the federal court to test out this matter. The suit in the state court was brought by the Oklahoma Packing Company, formerly Wilson & Company, against the Oklahoma Gas & Electric Company and the surety upon its bond, which was a surety corporation. The Oklahoma Gas & Electric Company is a domestic corporation organized and existing under and by virtue of the laws of the State of Oklahoma. The surety company was a foreign corporation, but it was merely a surety upon the bond of the Oklahoma Gas & Electric Company, and, of course, as to it there existed no separable controversy. Said Oklahoma Gas & Electric Company and said surety company were the only two defendants in the state court action. Therefore, it was impossible for the state court case to be removed to the federal court so as to have a hearing or a remedy on the law side of the federal court docket.

Under the cases first cited this court has jurisdiction to enjoin said proceeding in the state court as such proceeding in the state court was to enforce a statute which complainants in this court allege is repugnant to the Constitu-[fol. 138] tion of the United States, that is the 14th Amendment thereof. Thus the jurisdiction of this court is clear. The complainants here do not have, and never had any possible way to litigate this matter upon the law side of the federal court. Therefore complainants here have no adequate remedy at law at all as such term and expression is used and understood in the federal court decisions.

The legislative action of the state having become complete with the affirmance by the Supreme Court of the state of the order of the Corporation Commission, the complainants had and have a constitutional right to their choice of courts and to exercise their choice of seeking a review of the validity of said order in the federal courts. Complainants exercised their constitutional choice by the institution of this action.

Kansas City Southern Ry. Co. v. Cornish et al., 65 Fed. (2) 671.

In Willcox v. Consolidated Gas Company, 212 U. S. 19, at pages 39 and 40 the court says:

"At the outset it seems to us proper to notice the views regarding the action of the court below, which have been stated by counsel for the appellants, the Public Service Commission, in their brief in this court. They assume to criticise that court for taking jurisdiction of this case, as precipitate, as if it were a question of discretion or comity, whether or not that court should have heard the case. On the contrary, there was no discretion or comity about it. When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction (Cohens v. Virginia, 6 Wheat. 264, 404), and in taking it that court cannot be truthfully spoken of as precipitate in its conduct. That the case may be one of local interest only is entirely immaterial, so long as the parties are citizens of different States or a question is involved which by law brings the case within the jurisdiction of a federal court. The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied. In re Metropolitan Railway Receivership, 208 U. S. 90-110; Prentis v. Atlantic Coast Line et al., 211 U. S. 210."

Respectfully submitted, Rainey, Flynn, Green & Anderson; Allen, Underwood & Canterbury; R. M. Campbell, Attorneys for Complainants.

[File endorsement omitted.]

[fol. 139] In United States District Court for the Western District of Oklahoma

No. 1357. Equity

Oklahoma Gas & Electric Company, a Corporation, et al., Complainants,

v.

Oklahoma Packing Company et al., Defendants

R. M. Rainey, Streeter B. Flynn, I. J. Underwood, Calvin Jones, R. M. Campbell, F. G. Anderson, Geo. M. Green, and Allen, Underwood & Canterbury, for complainants.

C. D. Bennett and W. R. Brown, for defendants.

Before McDermott, Circuit Judge, and Kennamer and Vaught, District Judges

OPINION ON PETITION FOR REHEARING—Filed Oct. 12, 1933

Per CURIAM:

The petition for rehearing presents the proposition that since the plaintiff could not remove the action at law in the state court, Great Northern Ry. Co. v. Alexander, 246 U. S. 276, the Federal courts should enjoin its prosecution since the defendant therein raised a federal question by its answer. This is a startling suggestion to which we [fol. 140] cannot accede. Since the decision in Tennessee v. Union Planters Bank, 152 U. S. 454, construing the removal act of August 13, 1888 (25 Stat. 433), it has been uniformly held that a cause may not be removed because a defendant pleads a federal question in its answer. Plaintiff now says that while such a suit may not be removed to the Federal court, a Federal court should enjoin its prosecution. That is to circumvent the law as to removal, to deny the plaintiff in the state court action his right to proceed in the state courts, and is not supported by any authority cited. It would increase immeasurably the jurisdiction of the Federal courts if every defendant asserting a Federal question by way of defense in a state court, might enjoin proceedings in that court.

The claim is predicated upon a statement in Risty v. C. R. I. & P. Ry. Co., 270 U. S. 378, that equity has jurisdiction unless there is an adequate remedy at law in the Federal courts. That such statement was not intended to have such far-reaching consequences as contended for, is made clear by the recent statement of the Supreme Court in Matthews v. Rodgers, 284 U. S. 521, 526, that

"If the remedy at law is plain, adequate and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be involved, Jud. Code § 237, or to his suit at law in the federal courts if the essential elements of federal jurisdiction are present."

Ex Parte Young, 209 U. S. 123, and cases which follow it, are bottomed upon the proposition that, because of the

severity of the penalties or the multiplicity of threatened actions, the remedy by way of a defense in the state court is not adequate. No such situation is here presented.

The petition for rehearing is denied.

[File endorsement omitted.]

[fol. 141] In United States District Court

Order Denying Petition for Rehearing—October 12, 1933

By Direction of Judges McDermott, Kennamer and Vaught

On this 12th day of October, 1933, it is ordered by the Court that petition of the complainants for rehearing be and the same is denied.

[fol. 142] In United States District Court for the Western District of Oklahoma

No. 1357. Equity

Oklahoma Gas & Electric Company, a Corporation; Oklahoma Natural Gas Company, a Corporation; W. T. Phillips, Jr., H. J. Crawford, J. V. Ritts, Leonard C. Ritts, R. W. Hannan, A. W. Leonard and R. C. Sharp, the Directors of the Oklahoma Natural Gas Company, a Dissolved Corporation, and Oklahoma Natural Gas Corporation, Complainants,

vs.

Oklahoma Packing Company, Formerly Wilson & Co., Inc., of Oklahoma, an Oklahoma Corporation; Wilson & Co., Inc., of Oklahoma, a Delaware Corporation; The Corporation Commission of the State of Oklahoma, Paul Walker, Chairman; C. C. Childers and E. R. Hughes, Members of Said Commission, and J. Berry King, Attorney General of the State of Oklahoma, Defendants

Order Dismissing Bill of Complaint—Filed Dec. 12, 1933

And now, to-wit, on this 15th day of November, 1933, this cause having heretofore come on for final hearing upon

bill, answer and proofs, the evidence of both parties having been presented in open court, and the cause having been fully argued by counsel, and this court having rendered its written opinion, as well as findings of fact and conclusions of law, and being of the opinion that the said bill of complaint should be dismissed for want of equity, as set forth in said written opinion, and the complainants, on the 6th day of October, 1933, having filed their petition for rehearing and the same having been overruled by this Court on the 12th day of October, 1933,

[fols. 143–145] It is ordered, adjudged and decreed by the Court that the bill of complaint herein be and it is hereby dismissed for want of equity, with costs taxed to the complainants, to all of which the complainants, and each of them, excepted, and said exceptions are by the Court allowed.

Geo. T. McDermott, United States Circuit Judge.
F. E. Kennamer, United States District Judge.
Edgar S. Vaught, United States District Judge.

[File endorsement omitted.]

[fol. 146] IN UNITED STATES DISTRICT COURT

Condensed and Narrative Statement of Evidence—Filed Jan. 26, 1934

STIPULATION OF FACTS

It was stipulated and agreed by and between counsel for complainants and counsel for defendants that the following facts should be considered as evidence at the trial without the necessity of further proof, to-wit:

"I. At all the times mentioned in complainants' petition, the Oklahoma Natural Gas Company was a corporation engaged in the business of the production of, transportation and sale of natural gas as a public utility, supplying gas at various towns and cities in Oklahoma for domestic and industrial consumption. It held franchises for local distribution in a few towns and cities, but none in Oklahoma City.

"Wilson & Co. Inc., is a corporation operating a manufacturing plant situated in Oklahoma County southwest of and outside the corporate limits of the city of Oklahoma City. The Oklahoma Gas and Electric Company is

a corporation, at all the times herein involved, engaged in the distribution of gas in Oklahoma City to domestic and industrial consumers in Oklahoma City and immediate vicinity, and operating under a franchise from the City. Prior to the promulgation by the Corporation Commission of what is known as the gate rate order in June, 1921, the Oklahoma Natural Gas Company was supplying the Oklahoma Gas and Electric Company with natural gas at Oklahoma City under contracts and arrangements on the percentage basis.

"II. That at the time of making said gate rate order, and for some time prior thereto, there were only two reducing stations at, or through which the gas was reduced from high pressure to low pressure and delivered by said Oklahoma Natural Gas Company to the Oklahoma Gas and Electric Company, one of such stations being located at Thirty-sixth Street and Santa Fe Avenue, and the other being located at Pennsylvania and Reno Avenues, both of which stations were then outside of the city limits of Oklahoma City, both of same being northerly or north of the city. All of the gas passing through the reducing station at Thirty-sixth Street and Santa Fe Avenue was gas from the north or Oklahoma City produced in the fields known as the Cushing, Kellyville, Depew and other fields in that general locality, which points are north and east of Oklahoma City, and was transmitted by the pipe lines of the Oklahoma Natural Gas Company. During the year 1919, the Oklahoma Natural Gas Company built a transmission line to the gas field known as the Chickasha field near Chickasha, Oklahoma, southwest of Oklahoma City, and said line extended from said Chickasha field to Independence Avenue in Oklahoma City and thence proceeded north on said Independence Avenue nearly a mile west of the packing plant of Wilson & Co., extending on to Reno Avenue, thence east on that Avenue to the reducing station at Pennsylvania and Reno, said Reno Avenue being something over a mile north of said packing plant. The Oklahoma Natural Gas Company in 1921, constructed a six-inch gas line connected with its system and extending east and west through Ash Avenue west of Oklahoma City, and located about five or six hundred feet south of the engine-room of Wilson & Co. Inc.; said gas line in Ash Street ex-[fol. 147] tended 1500 feet east of Wilson & Co. Inc.'s

plant, and connected with a meter or measuring station located at or immediately adjacent to the intersection of Hickory Street and Agnew Street, and within two hundred feet of the city limits of the city of Oklahoma City; this gas line was constructed for use in such emergency as might arise by the washing out at the river crossings of its line on Independence Avenue; the said measuring station located at or near the intersection of Hickory Street and Agnew Street, remained in this location throughout the month of September, 1924, and for some time thereafter; in September, 1924, Agnew Street was, and still is, the city limits of Oklahoma City; the plant of Wilson & Co. Inc., of Oklahoma, was, in September, 1924, and now is, located immediately west of the intersection of Agnew and Hickory Streets, and approximately 1500 feet outside the city limits of Oklahoma City.

"The defendant, Oklahoma Gas and Electric Company, desired to serve gas to Wilson & Co. Inc., for fuel purposes and made an arrangement or agreement with the Oklahoma Natural Gas Company, in 1924, at some date following the month of September, to move its measuring station or meter from its location at or near the intersection of Agnew and Hickory Streets, to some point west of the plant of Wilson & Co., Inc. of Oklahoma, and the said measuring station was finally located at or near the intersection of Ash and May Avenue, approximately one-third of a mile west of Wilson & Co. Inc.'s plant, and approximately 3000 feet west of Agnew Street, the city limits of Oklahoma City. It was at first understood between the Oklahoma Natural Gas Company and the Oklahoma Gas and Electric Company that the measuring station should be located just south of the Wilson & Co. Inc. plant at the point where Wilson & Co. Inc. were to be served and the Oklahoma Gas and Electric Company on April 3, 1925, purchased that part of the Oklahoma Natural Gas Company's line between such point and the measuring station at Hickory Street. The Oklahoma Gas and Electric Company constructed a service line extending from the main on Ash Avenue, to the boiler-room of Wilson & Co. Inc., and the necessary meters and measuring devices, a distance of about 450 feet.

"III. Prior to the making of the gate rate order in 1921, the Oklahoma Gas and Electric Company had been

supplying gas to users at Oklahoma City, both within and without the city limits. When the gate rate order was made and the Oklahoma Natural Gas Company was required to put in gates and measure, sell and deliver the gas to the Oklahoma Gas and Electric Company at said gates, there were several consumers of gas outside of and beyond the location of the gate stations, who had been supplied by the Oklahoma Gas and Electric Company, and in carrying out said order, it was agreed between the Oklahoma Gas and Electric Company and the Oklahoma Natural Gas Company, with the assent of the Corporation Commission that the Oklahoma Natural Gas Company could, if it desired, continue to supply gas to such consumers outside the gate, and all or some of them were continued to be so supplied after said gate order by the Oklahoma Natural Gas Company. During 1924-1925-1926, the Oklahoma Natural Gas Company served gas to Lorris E. Cobb, R. S. Schuneman and Billie Gregg, outside of the city limits and outside the measuring stations. However, each of them consumed less than one hundred thousand cubic feet per month. No other consumers except Billie Gregg, were furnished gas by the Oklahoma Natural Gas Company out- [fol. 148] side the said gates, except consumers over whose land its pipe line was laid, and except certain domestic customers who were outside of the city gates or measuring stations on the lines of the Oklahoma Natural Gas Company and were being served by the Oklahoma Gas and Electric Company at the time of the gate rate order. The Oklahoma Natural Gas Company never served consumers inside of the gates whose gas had been measured and charged to the distributing company. It had no desire to furnish any gas in competition with its biggest customer, the Oklahoma Gas and Electric Company who was purchasing all its gas from the Oklahoma Natural Gas Company.

"IV. In September, 1924, the Oklahoma Natural Gas Company made its application to the Corporation Commission of the State of Oklahoma, to establish a reduction in rates for gas for industrial purposes; the Corporation Commission acted upon its application and by Journal Entry No. 1203, in Cause No. 6030, authorized the Oklahoma Natural Gas Company to establish rates for industrial gas of thirty-eight cents per thousand cubic feet, for

the first 100,000 cubic feet, per month, and fifteen cents per thousand cubic feet, for all gas in excess of the first 100,000 cubic feet, per month, provided there was a minimum consumption of 30,000,000 cubic feet per month, per customer; said rates were to apply to consumers located outside of the city limits of the cites served by the Oklahoma Natural Gas Company; the Corporation Commission did, by its Journal Entry No. 3276, in Cause No. 5965, authorize the Oklahoma Natural Gas Company to reduce its rates to thirty-five cents per thousand cubic feet for the first 100,000 cubic feet, per month, and fifteen cents per thousand cubic feet, for all in excess of the first 100,000 cubic feet, per month, where the consumer used a minimum of 15,000,000 cubic feet per month; said rate became effective on January 1, 1926; it is admitted that the Oklahoma Natural Gas Company did, from and after January 1, 1926, furnish gas to Producers & Refiners Corporation, located immediately outside of Tulsa, Oklahoma, at the rate of thirty-five cents per thousand cubic feet, for the first 100,000 cubic feet, per month, and fifteen cents per thousand cubic feet for all over 100,000 cubic feet; that the consumption of the Producers & Refiners Corporation during the months of January, to and including the month of September, 1926, was from 45,898,000 cubic feet, to 65,287,000 cubic feet. Also the Oklahoma Natural Gas Company furnished industrial gas to several other industrial users at Sapulpa and Tulsa. The Oklahoma Natural Gas Company had franchises and owned and operated the gas distribution systems in the cities of Sapulpa and Tulsa during all of the times herein involved.

"V. In December, 1924, the Oklahoma Gas and Electric Company began serving gas to Wilson & Co. and built a service line from the six-inch line in Ash Street to Wilson & Co.'s boilers. April 13, 1926, upon complaint of Wilson & Co. the Corporation Commission promulgated its order No. 3388, which order required the Oklahoma Natural Gas Company to serve Wilson & Co. with gas at its industrial rate. Both the Oklahoma Gas and Electric Company and the Oklahoma Natural Gas Company appealed to the Supreme Court and the Oklahoma Gas and Electric Company gave bond to supersede the execution of the order and supersedeas was ordered upon filing and approving bonds.

[fol. 149] "VI. In the month of September, 1926, the Oklahoma Natural Gas Corporation purchased the natural

gas system of Oklahoma Natural Gas Company and continued thereafter to operate the transmission and distribution systems in Oklahoma. As of March 1, 1928, the Oklahoma Natural Gas Corporation purchased the natural gas distributing systems of the Oklahoma Gas and Electric Company in the various cities and towns in Oklahoma, including Oklahoma City, and thereafter operated said distributing systems in said cities and towns. The Oklahoma Natural Gas Corporation concurrently, with the commencement of its operations of the gas distributing systems in said cities and towns previously owned and operated by Oklahoma Gas and Electric Company, placed in effect in said cities and towns its industrial gas rates that had theretofore been effective in other cities and towns, and on the general system owned and operated by Oklahoma Natural Gas Corporation. The Oklahoma Natural Gas Corporation after March 1, 1928, furnished gas to Wilson & Co. Inc. for boiler fuel purposes at its established rate of thirty-five cents for the first 100,000 cubic feet per month, and fifteen cents per 1,000 cubic feet, for all in excess thereof, during the months that the total consumption exceeded 15,000,000 cubic feet.

"VII. It is agreed that Billie Gregg's place where the Oklahoma Natural Gas Company served gas after the gate rate order was located outside and beyond the city measuring stations and was approximately three miles north of Wilson & Co.'s plant and approximately a mile west of the city limits of Oklahoma City.

"VIII. It is agreed that gas was furnished by Oklahoma Natural Gas Company to Oklahoma Gas and Electric Company through the measuring station located near the intersection of Hickory and Agnew streets in the following quantities and during the following months, to-wit:

January, 1922	563,000 cubic feet
October, 1923	3,467,000 cubic feet
November, 1923	7,879,000 cubic feet

and that no other gas was measured through said measuring station from the date of its construction up to the date of its discontinuance. It is agreed that the first gas was metered through the measuring station constructed at Ash Street and May Avenue by Oklahoma Natural Gas Company to Oklahoma Gas and Electric Company in the month of December, 1924. Wilson & Co. intermittently

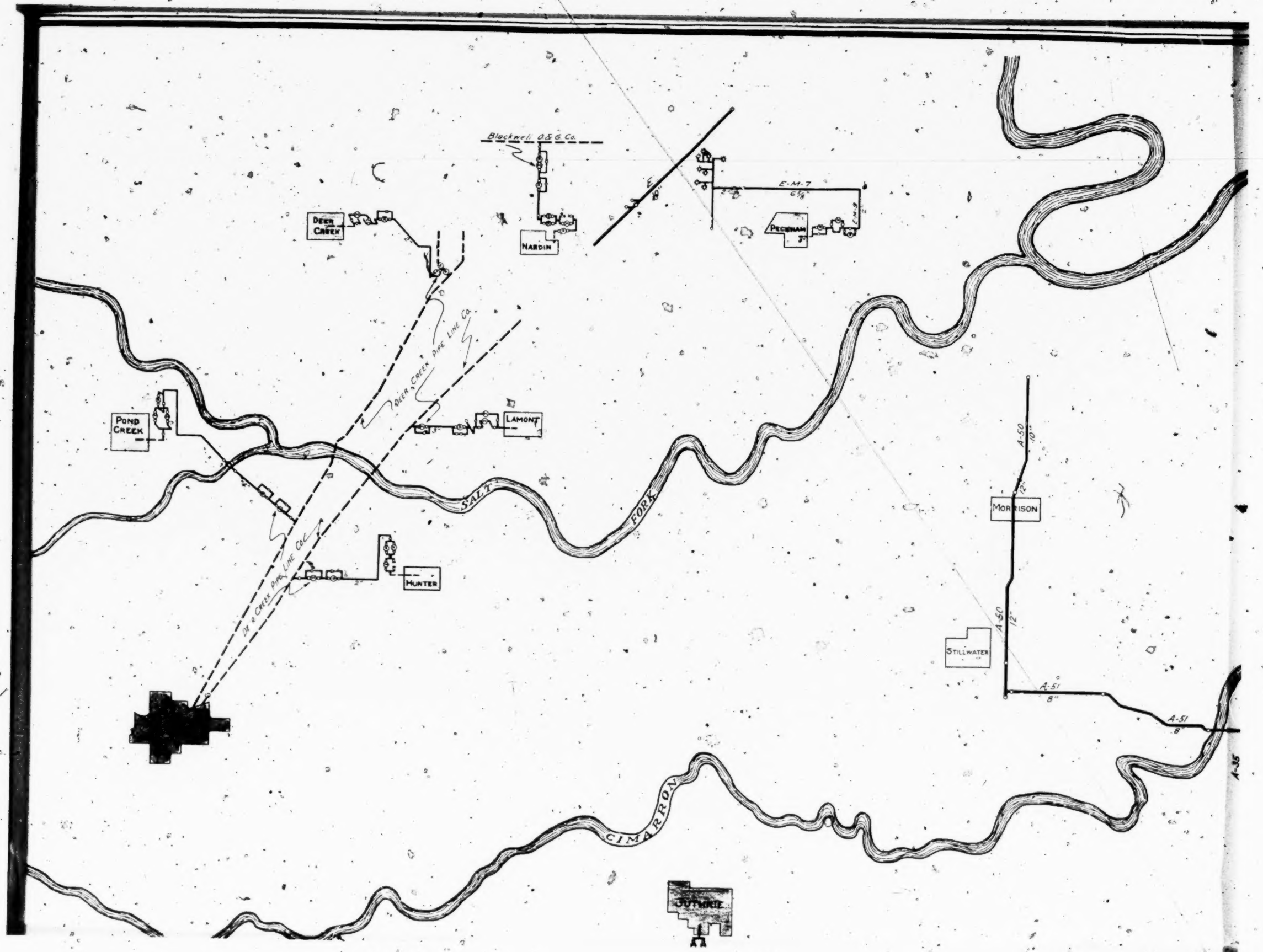
purchased gas from the Oklahoma Gas and Electric Company for use for fuel under its boilers from the year 1916 or 1917, but did not purchase from the Oklahoma Gas and Electric Company, or use gas as fuel for its boilers, from the 14th day of May, 1923, until it commenced again in December, 1924. It is agreed, however, that from the date of the gate rate order in the year 1921, at or about which time the measuring stations were installed, Wilson & Co. purchased gas for miscellaneous incidental purposes at its plant from the Oklahoma Gas and Electric Company during each and every month up until December, 1924, and during some of said months purchased additional supplies of gas for fuel under its boiler plant.

"It is agreed that any of the parties hereto may introduce additional evidence to establish any other material fact or facts."

[fol. 150] Testimony of Robert W. Hendee

Mr. Robert W. Hendee, a witness for complainants, testified that he was president of the Oklahoma Natural Gas Corporation and resided at Tulsa, Oklahoma; that his first connection with the Oklahoma Natural Gas Company began in 1921; that he was familiar with the transmission systems and the distribution systems operated by the Oklahoma Natural Gas Company in the years 1925 and 1926; witness then identified the map marked for identification as complainant's Exhibit No. 2, and stated that it was a no scale map showing the lines of the Oklahoma Natural Gas Company as of May 1, 1926; that it also showed the cities and towns served; that the black lines on the map represented the main transmission system lines; that the cities and towns marked in red represented gas distribution plants operated by the Oklahoma Natural Gas Company as of May 1, 1926; that the cities and towns marked in blue represented the distribution plants operated by the Oklahoma Gas and Electric Company at that time; that the two companies were separate and distinct corporations; that the cities and towns marked in green represented gas distribution plants operated at that time by other distribution companies but served at the gate by the Oklahoma Natural Gas Company; that the same condition existed during the year 1925.

(Here follows Exhibit 2, side folio 151)


Blackwell O & G Co.
E
8"
E-M-7
6⅝
E-M-8
PECKHAM
NARDIN
DEER CREEK
DEER CREEK PIPE LINE CO.
POND CREEK
LAMONT
SALT FORK
HUNTER
DEER CREEK PIPE LINE CO.
A-50
10"
12"
MORRISON
STILLWATER
A-50
12"
A-51
8"
A-51
8"
A-35
CIMARRON
JUTHRIE

ARKANSAS RIVER

RIVER

BREENE COMPR. STA.

GAS TRAPS

G-M-18

RESERVOIR MEAS. STA.

KENNEDY MEAS. STA.

GAS PLANT

RED FORK

SOUTH RIVER MEAS. STATION

A-M-53

SAPULPA

KELLYVILLE

A-M-56

KELLYVILLE COMPR. STA.

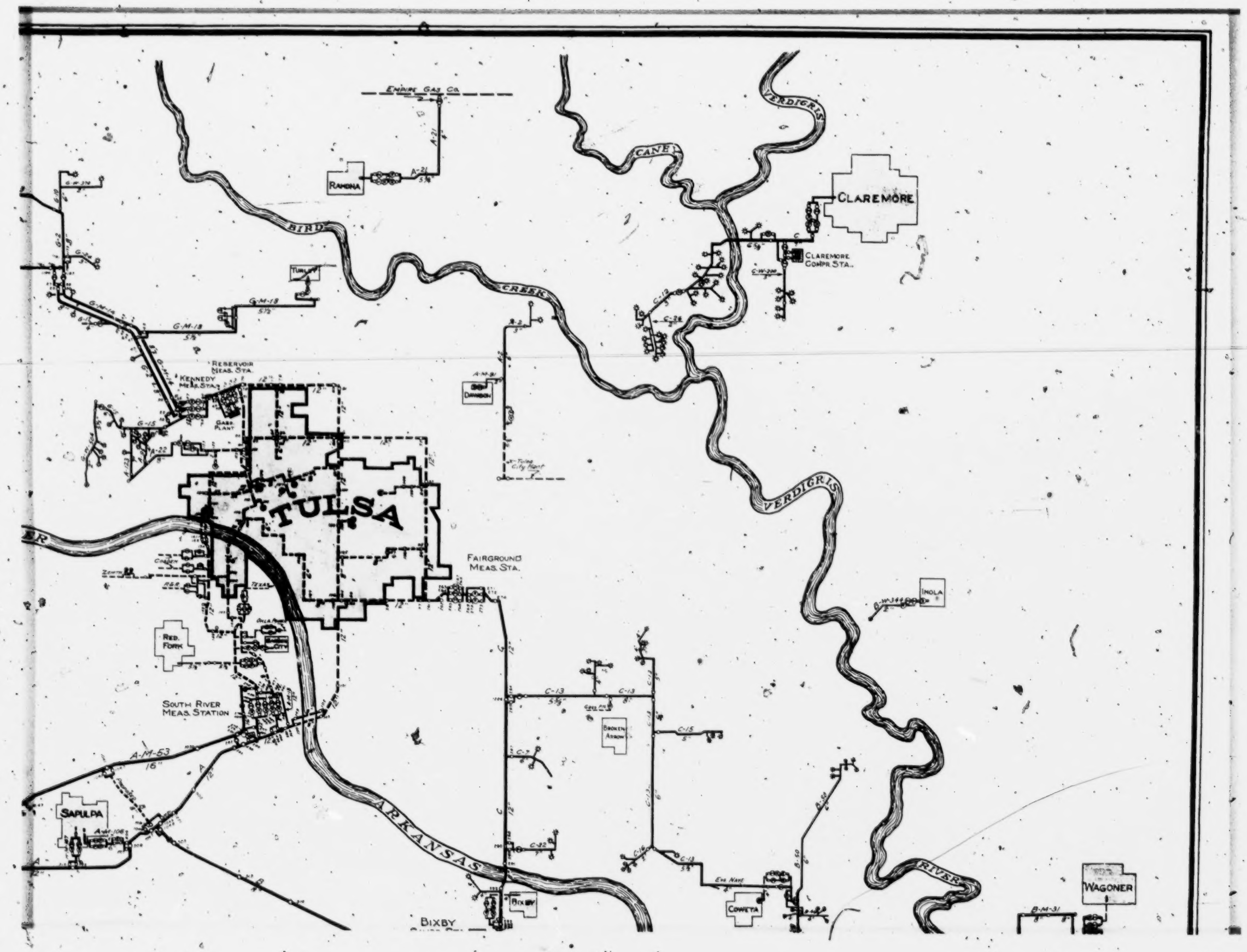
GAS PLANT

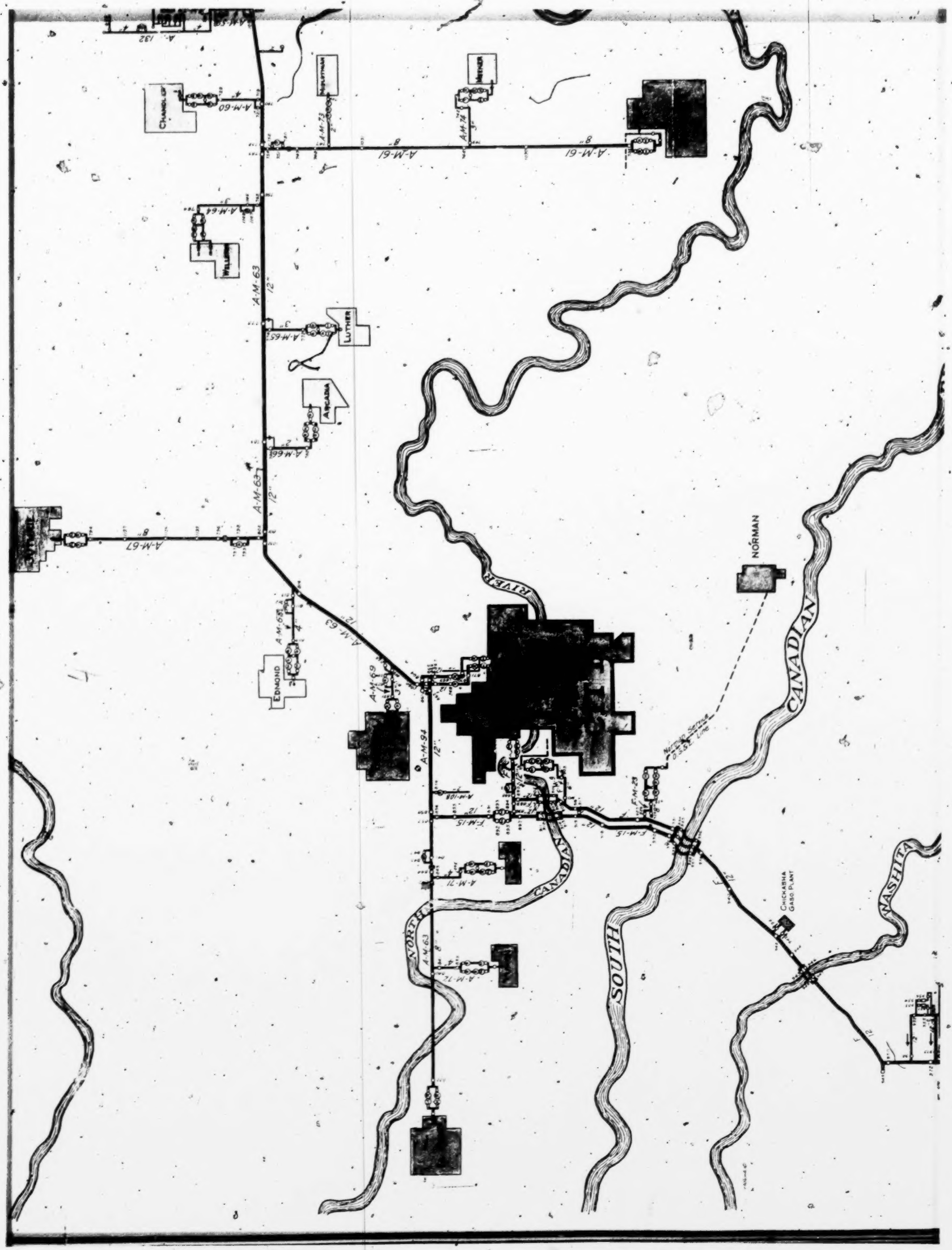
CRAWFORD JUNCTION

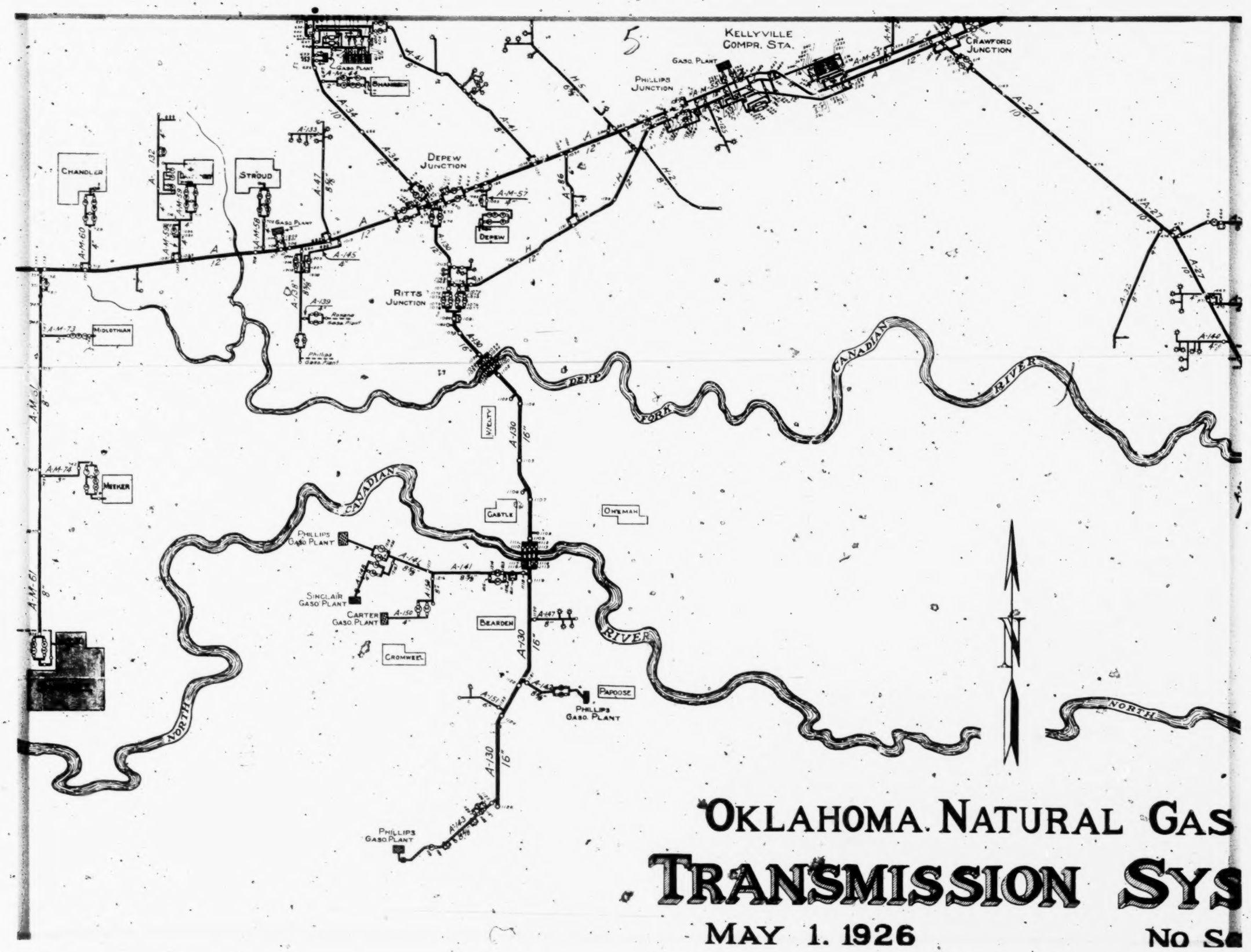
A-51

A-35

SHAMROCK COMPR. STA.


EMPIRE GAS CO.
RAMONA
A-21
5"
BIRD CREEK
VERDIGRIS
CANEY
CLAREMORE
CLAREMORE COMPR. STA.
C-12
C-24
G-M-2M
G-M-3M
G-M-2
G-M-1A
G-M-1B
G-M-1B
5"
TURN
RESERVOIR MEAS. STA.
KENNEDY MEAS. STA.
GAS PLANT
G-15
A-22
A-M-81
DEW DAWSON
TULSA CITY PLANT
B-2
TULSA
FAIRGROUND MEAS. STA.
INOLA
B-W-34
RED FORK
CITY
SOUTH RIVER MEAS. STATION
C-13
C-13
C-13
C-13
C-13
C-15
5"
BROKEN ARROW
C-2
C-22
A-M-53
16"
SAPULPA
A-M-106
ARKANSAS
RIVER
C-16
C-13
EVA NAVE
B-50
B-22
CONETA
BIXBY
BIXBY
WAGONER
B-14-31


NORMAN
RIVER
CANADIAN
NORTH CANADIAN
SOUTH CANADIAN
WASHITA
EDMOND
CHANDLER
WELLER
LUTHER
ARCADIA
A-M-63
A-M-61
A-M-67
A-M-69
A-M-94
A-M-71
A-M-72
A-M-73
A-M-60
A-M-64
A-M-65
A-M-66
A-M-68
A-M-108
F-M-15
F-M-23
12"
8"
Natural Service
O.G.&E. Line
CHICKASHA
GASO PLANT

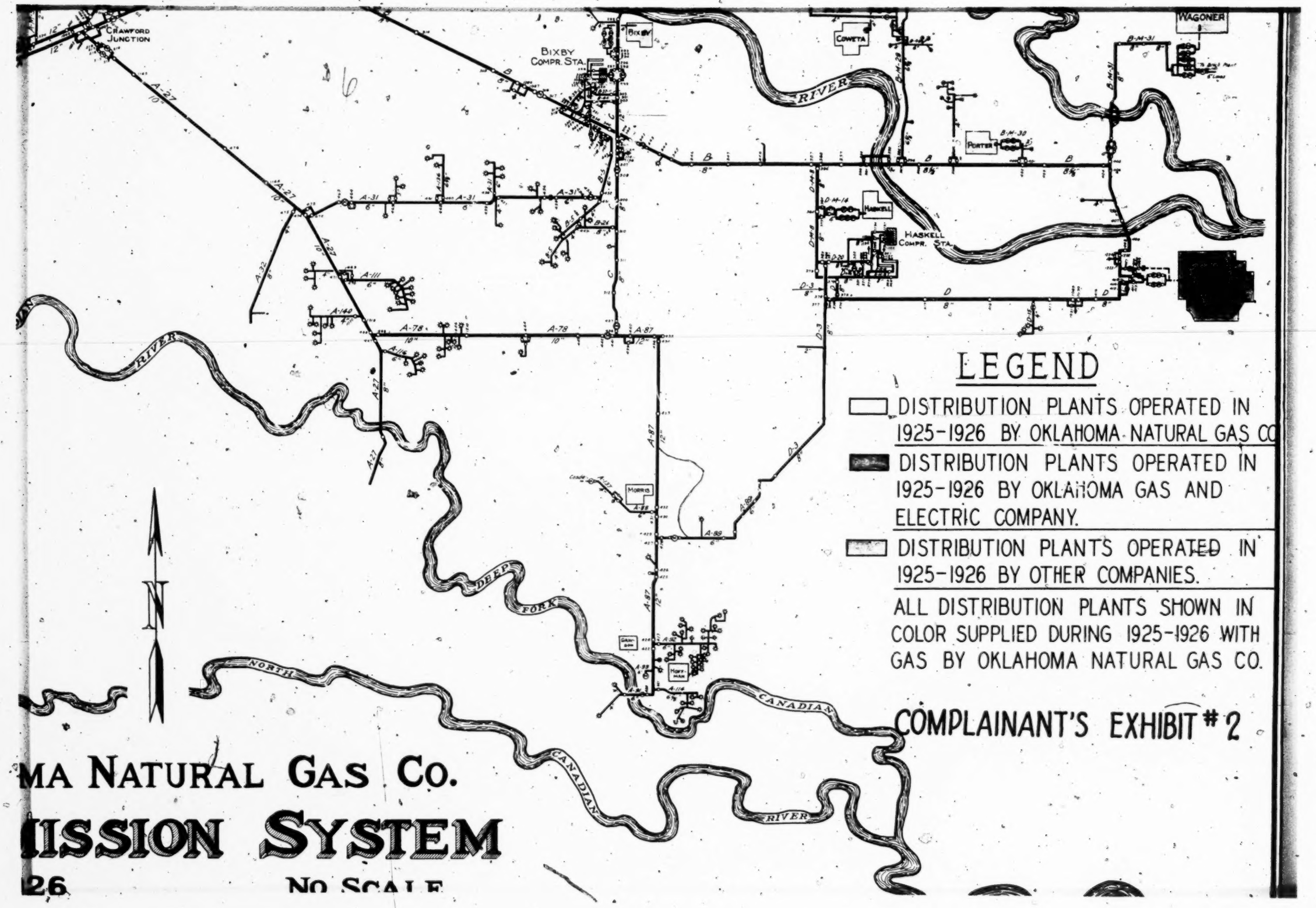


OKLAHOMA. NATURAL GAS

TRANSMISSION SYS

MAY 1. 1926

No S



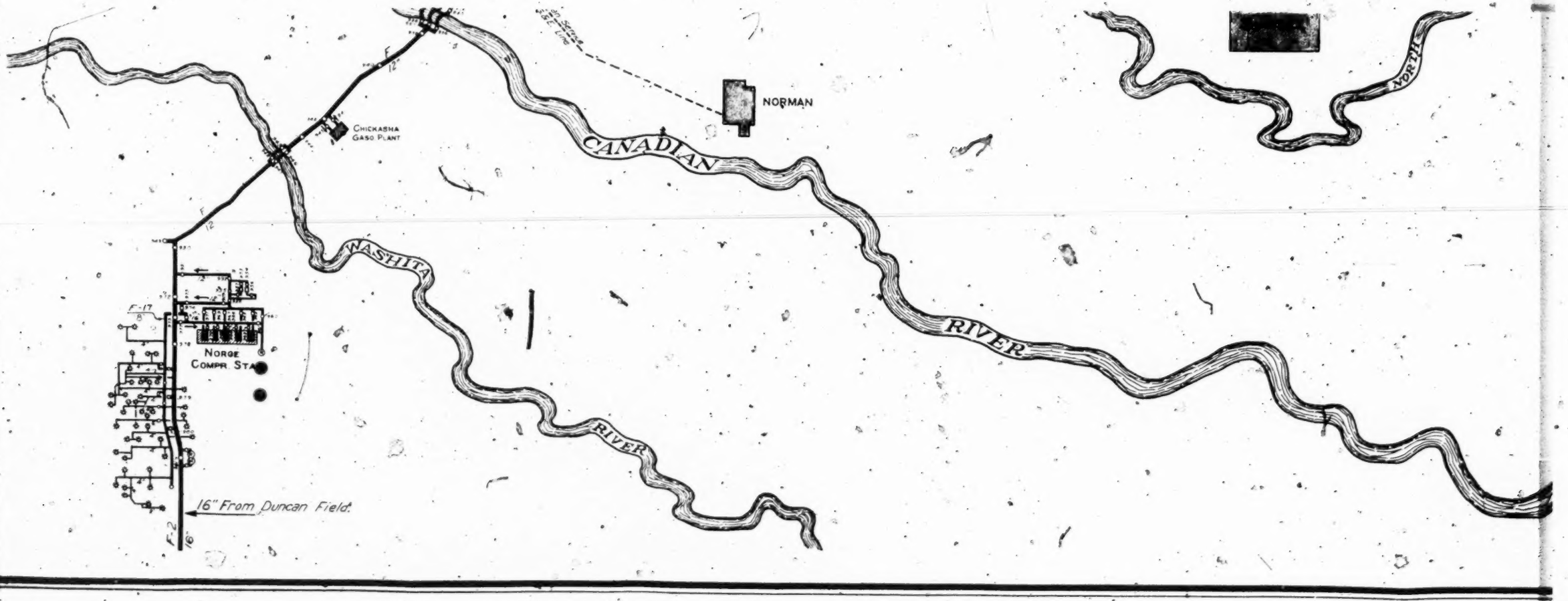
COMPLAINANT'S EXHIBIT # 2

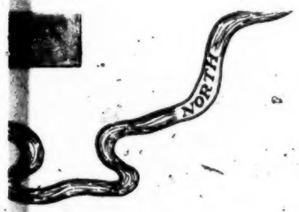
MA NATURAL GAS CO.

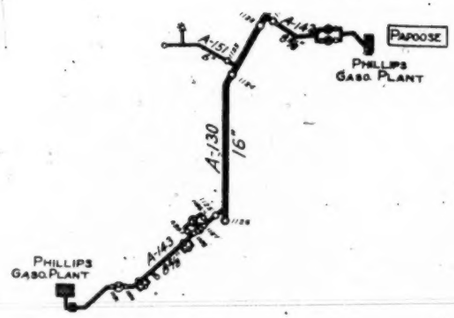
ISSION SYSTEM

26

NO SCALE


NORMAN
CHICKASHA
GASO PLANT
CANADIAN
RIVER
WASHITA
RIVER
NORTH
NORGE
COMPR. STA.
16" From Duncan Field.
F-17
F-2
F 12



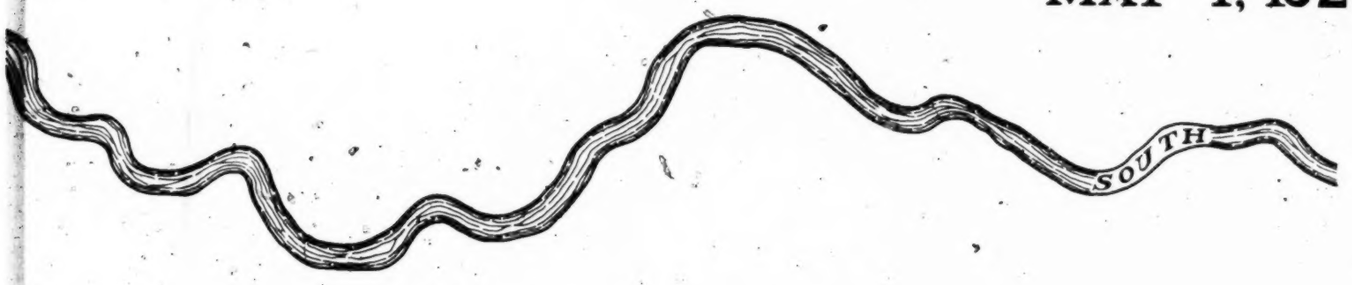


OKLAHOMA NATURAL GAS CO.

TRANSMISSION SYSTEM

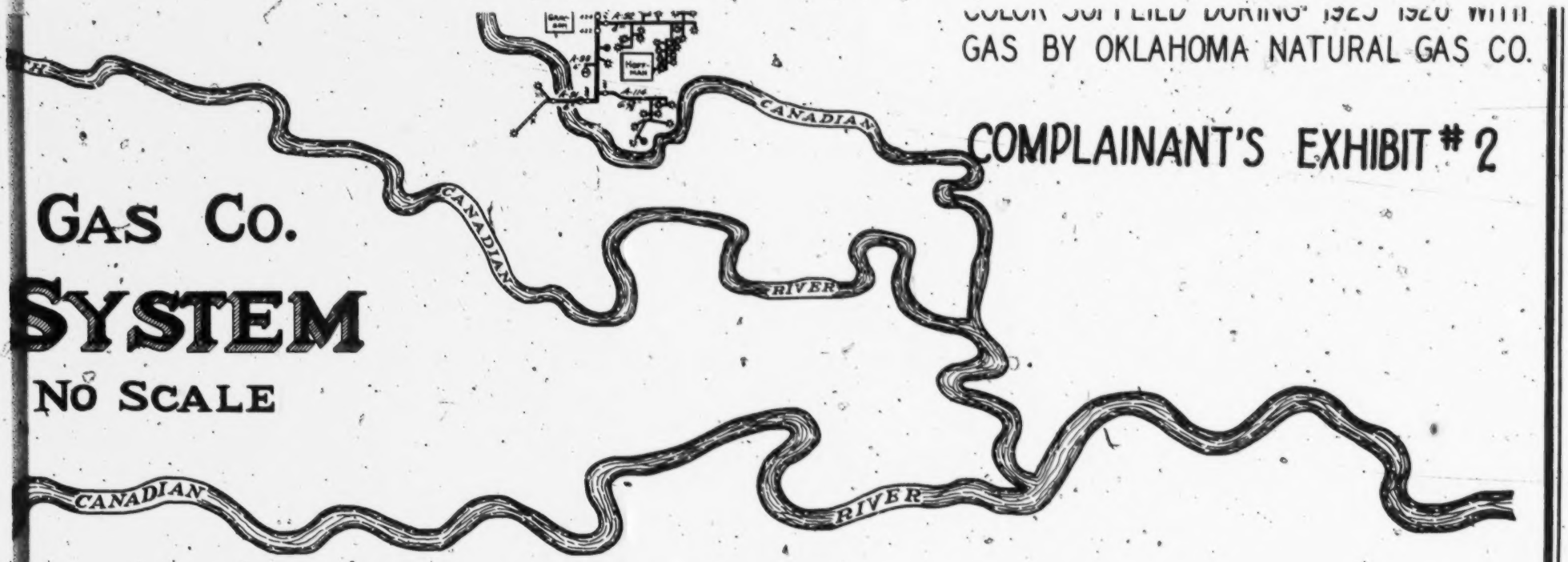
MAY 1, 1926

NO SCALE



LEGEND

- Gate.
- Plug.
- Stop.
- Meter.
- Regulator.
- Gas Well.
- Check Valve.
- Orifice Flange.
- A-66 / 6" Gas Pipe Line, Name & Size.



COLOR SOFFIELD BORING 1925 1926 WITH
GAS BY OKLAHOMA NATURAL GAS CO.

COMPLAINANT'S EXHIBIT # 2

GAS CO.

SYSTEM

NO SCALE

[fol. 152] Testimony of Logan W. Cary

Logan W. Cary, a witness for complainants, testified that he had no connection with the Oklahoma Gas and Electric Company at this time but that he was gas superintendent for said company from 1919 to July 28, 1928, and that he was familiar with the gas distribution system of the company during said time; that complainant's Exhibit No. 3 is a map representing the medium pressure system of the Oklahoma Gas and Electric Company and main line of the Oklahoma Natural Gas Company supplying Oklahoma City; that the red lines show the Oklahoma Natural Gas Company's gas system going around the city and the green lines the medium pressure lines of the Oklahoma Gas and Electric Company, through which gas was usually distributed under fifty pounds to various points throughout the city to what are called the gas regulator stations which are in the nature of pressure transformers and reducers and that the low pressure lines are connected with these regulator stations; that the map also shows some lines colored in yellow that were originally owned by the Oklahoma Gas and Electric Company which were removed after gas came in from the southern part of the state.

That the black lines, to the right of Wilson & Co.'s plant, are the low pressure lines of the Oklahoma Gas and Electric Company's distribution system in that vicinity used to supply domestic consumers; that there are low pressure lines in each alley and street in the city but this map shows only that small district; that the little green dot at the end of the arrow is a regulator and in the electric system would be a transformer station. The pressure in the Oklahoma Natural Gas Company's supply lines varied from 350 pounds down, and at and prior to the making of the gate rate order the Oklahoma Natural Gas Company had only two regulator stations in the vicinity of Oklahoma City, one at the intersection of 36th and Santa Fe Streets, at which regulator stations the pressure of the gas was reduced before passing into the distribution lines [fol. 153] of the Oklahoma Gas and Electric Company, and Wilson & Co. was then receiving its gas through these stations. The large red dot marked "A" on the north side of the map (Exhibit 3) represents the regulator station at 36th and Santa Fe Streets and the large red dot in the

southwest portion of the map, marked "B", represents the regulator station at Reno and Pennsylvania.

After the taking effect of the gate rate order meters were placed at the regulator stations A and B and the gas was thereafter measured and paid for on a volume basis.

The other large red dot farthest to the southwest corner of the map, marked "C", represents the regulator and metering station that was established in December, 1924, at May and Ash Avenues. At that time and long prior thereto Wilson & Co. was using small quantities of gas which came through the regulator and measuring stations at 36th and Santa Fe and at Reno and Pennsylvania, but was not using gas for fuel under its boilers. During the summer months the station at Reno and Pennsylvania was shut down and all the gas came into the Oklahoma Gas and Electric Company's distribution system from 36th and Santa Fe, but during the winter months both stations were open and in cold weather gas entered the Oklahoma Gas and Electric Company's system from the north through these two stations and went south through the eight inch line on Pennsylvania Avenue (represented in green on the map) to Wilson & Co.'s plant, and Wilson & Co. received all of its gas through these stations.

Wilson & Co. was using gas as a fuel under its boilers at the time of the making of the gate rate order in June 1921 and had used gas intermittently for fuel under its boilers from 1916 until December, 1924, when the regulator and measuring station was established at point C, but at that time it was not using gas for fuel under its boilers and had not been for some time. That witness's recollection is that for almost two years Wilson & Co. had been [fol. 154] offered gas by the Oklahoma Gas and Electric Company. There was a change in the price of fuel and Oklahoma Gas and Electric Company convinced Wilson & Co. that it could burn gas cheaper than other fuel and it agreed to purchase gas for fuel under its boilers. Prior to that time Wilson & Co. had been served from the line shown in front of the plant and through a line that ran down between the property of Wilson & Co. and Morris & Co. This line had been idle for between one and two years so the Oklahoma Gas and Electric Company made a pressure test of it with an air compressor and found that the line was in such condition that there was no showing

whatever on the pressure gauge. This line ran right on the property line of Wilson & Co. between Wilson & Co.'s plan and Morris & Co.'s plant and between a cooling tower and fence underneath pavement in the front, which made it expensive and difficult to replace and it being on Wilson & Co.'s property the Oklahoma Gas and Electric Company did not feel like replacing it.

There was an unusually big flood in 1923 and all of the river crossings of the Oklahoma Natural Gas Company's lines south and west of the city went out and that company ran a six inch emergency line over through Packingtown and connected with the medium pressure system of the Oklahoma Gas and Electric Company in the alley just off Agnew and set a temporary meter on the regulator station at that point and the Oklahoma Gas and Electric Company backfed through the line up past Reno and Pennsylvania during the emergency until the flood was over. When Wilson & Co. decided in the fall of 1924 to again use gas for fuel under its boilers, the Oklahoma Gas and Electric Company, in order to save the expense of renewing this line on Wilson & Co.'s property, asked the Oklahoma Natural Gas Company if it had any objections to the Oklahoma Gas and Electric Company serving Wilson & Co. from this temporary line on the south side of Wilson & Co.'s plant. The Oklahoma Natural Gas Company agreed to this plan and we agreed to install a measuring [fol. 155] station on the south side of Wilson & Co.'s plant, and the Oklahoma Gas and Electric Company purchased from the Oklahoma Natural Gas Company that part of the emergency line shown in red from a point immediately south of Wilson & Co.'s plant running east on Ash Avenue to the alley west of Agnew and thence north to the regulator station opposite Hickory Street. The agreement between the Oklahoma Gas and Electric Company and Wilson & Co. for Wilson & Co. to resume burning gas for fuel under its boilers was oral and made between the witness and the superintendent of Wilson & Co. The agreement between the Oklahoma Gas and Electric Company and Oklahoma Natural Gas Company about placing the meter south of Wilson & Co.'s packing plant was not in writing. When the gate rate order was made in 1921 this red line was there but the regulator station was in the alley west of Agnew at the point indicated on the map. It was an emergency station.

The Oklahoma Natural Gas Company was unable to procure a site for a regulator and metering station south of Wilson & Co.'s plant and it established a regulator station and installed a meter at May and Ash Avenues (Point marked C on Exhibit 3). The Oklahoma Gas and Electric Company thereupon made a verbal agreement with the Oklahoma Natural Gas Company whereby the former should purchase the portion of the emergency line east of the new measuring station to the point of connection south of Wilson & Co.'s plant with that part of the emergency line it had already purchased and paid for and said line was turned over to the Oklahoma Gas and Electric Company and thereafter it was used and maintained by the Oklahoma Gas and Electric Company. In this connection witness testified as follows:

By McDermott, J.:

"Q. You say by this oral contract in November 1924 you bought this pipe line?

A. Yes, sir.

Q. Did you take any deed or any bill of sale for it?

[fol. 156] A. Well, I negotiated with Mr. Leonard.

Q. Did you at that time take any bill of sale or deed for it?

A. No, sir.

Q. You had nothing to show your ownership of it?

A. No, sir.

Q. You say they turned possession over to you. How do you turn possession of a pipe line over?

A. Well, moved their meter back and we were responsible for everything over their meter.

Q. You said awhile ago you didn't know whether they built the meter or not.

A. That was a new station.

Q. Did you maintain it after that in 1925?

A. The line.

Q. Yes, sir.

A. Yes, sir.

Q. Do you know whether you had any occasion to do any repair work on that line during that period?

A. It was laid as a temporary line and we did for sometime.

Q. Why didn't you pay for it for eighteen months. I don't understand that.

A. Because there was some discussion about the pipe, as to the value of the line.

Q. In other words, you hadn't agreed upon the price in '26?

A. No, sir.

Q. So your November contract was to buy the pipe line at a later date if you could agree on the price?

A. Yes, sir."

Thereafter the gas passed from the Oklahoma Natural Gas Company's transmission lines into the distribution system of the Oklahoma Gas and Electric Company at point C where the pressure was reduced and the gas was metered, and the Oklahoma Gas and Electric Company supplied Wilson & Co. with gas that came in through this line. When the measuring station was discontinued at Agnew and the one established at point C a new building was erected, but witness does not know whether the same meter was used. [fol. 157] No complaint was made by Wilson & Co. until it filed its complaint before the Corporation Commission.

The Oklahoma Gas and Electric Company's distributing system extends around Oklahoma City in many directions and was designed to serve consumers in the vicinity or community of Oklahoma City as well as customers within the city limits and for a long time all the gas supplied consumers on the Oklahoma Gas and Electric Company's distribution system, including Wilson & Co., came into its system through the stations at 36th and Santa Fe and Reno and Pennsylvania, and Packingtown was at the far end of the distribution system.

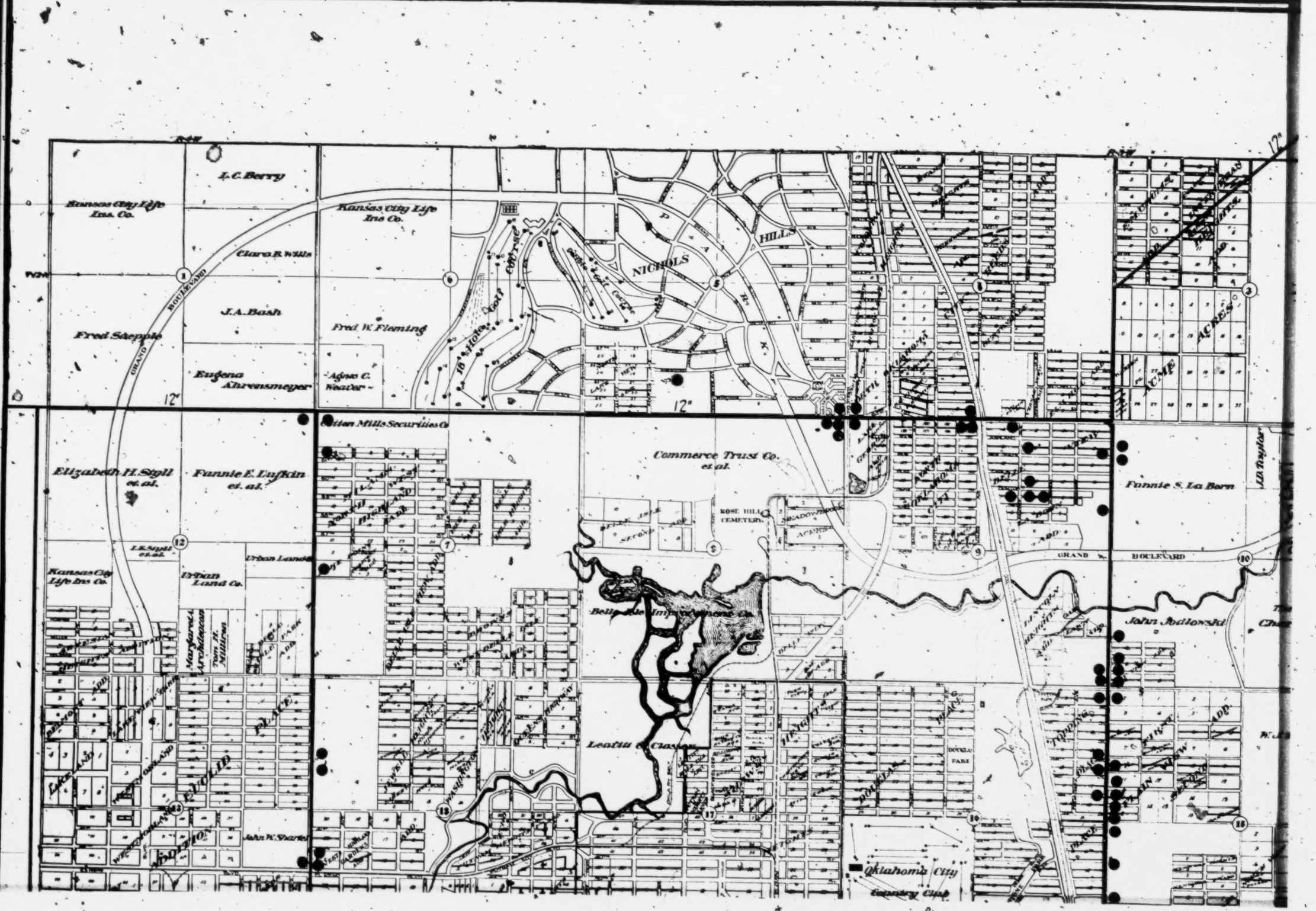
When the gate rate order was established in 1921 the Oklahoma Gas and Electric Company had customers beyond the measuring stations at Reno and Pennsylvania and 36th and Santa Fe and owned the meters and lines serving same.

The Oklahoma Gas and Electric Company laid lines of sufficient size to serve all the load in the Packingtown district long before there was any gas coming from the south at all and did serve that district. It had many consumers within that district, both within and without the city limits of Oklahoma City. It used to serve Morris & Co. as well

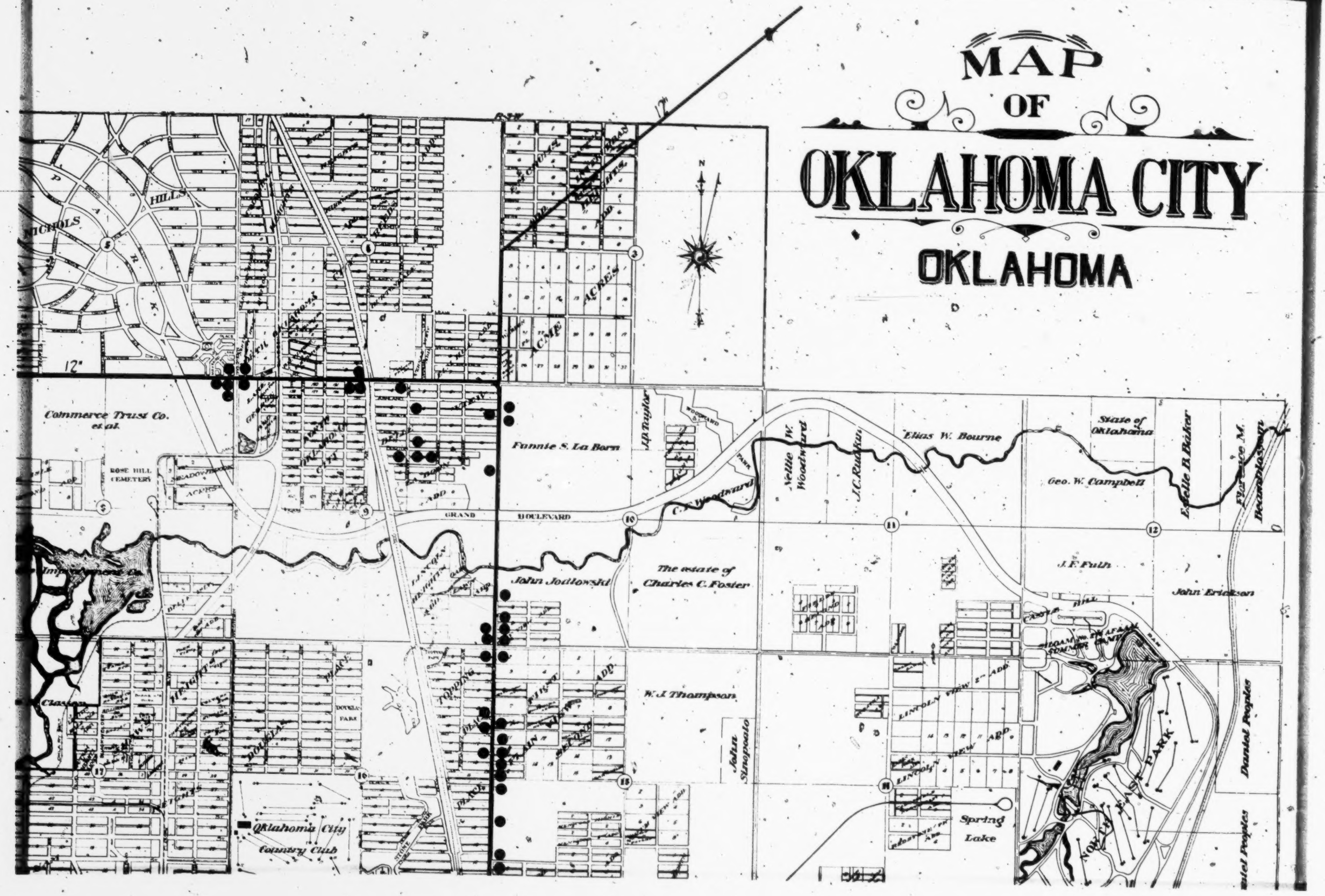
as Wilson & Co. and the Coliseum and some mule barns over there, all of which were outside of the city limits.

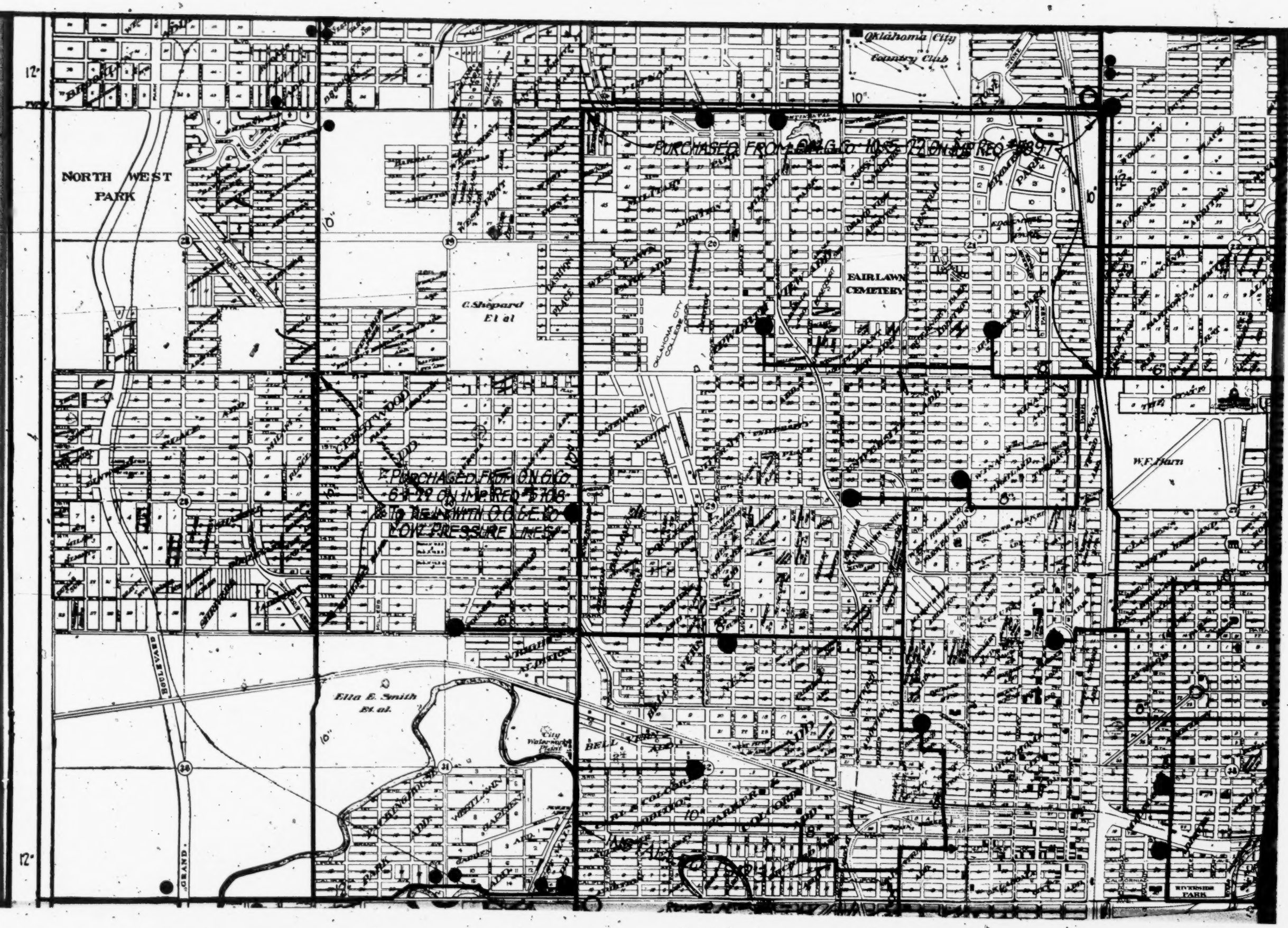
Mr. Cary identified complainants' Exhibit 4 and stated that it was substantially correct and showed the high pressure lines of the Oklahoma Natural Gas Company and the medium pressure lines of the Oklahoma Gas and Electric Company as they existed at the time of the application for the order that was made in this case in April, 1926, and witness further stated that the low pressure lines as shown on the map are about the same as they were in 1926. Exhibits 3 and 4 were thereupon introduced in evidence.

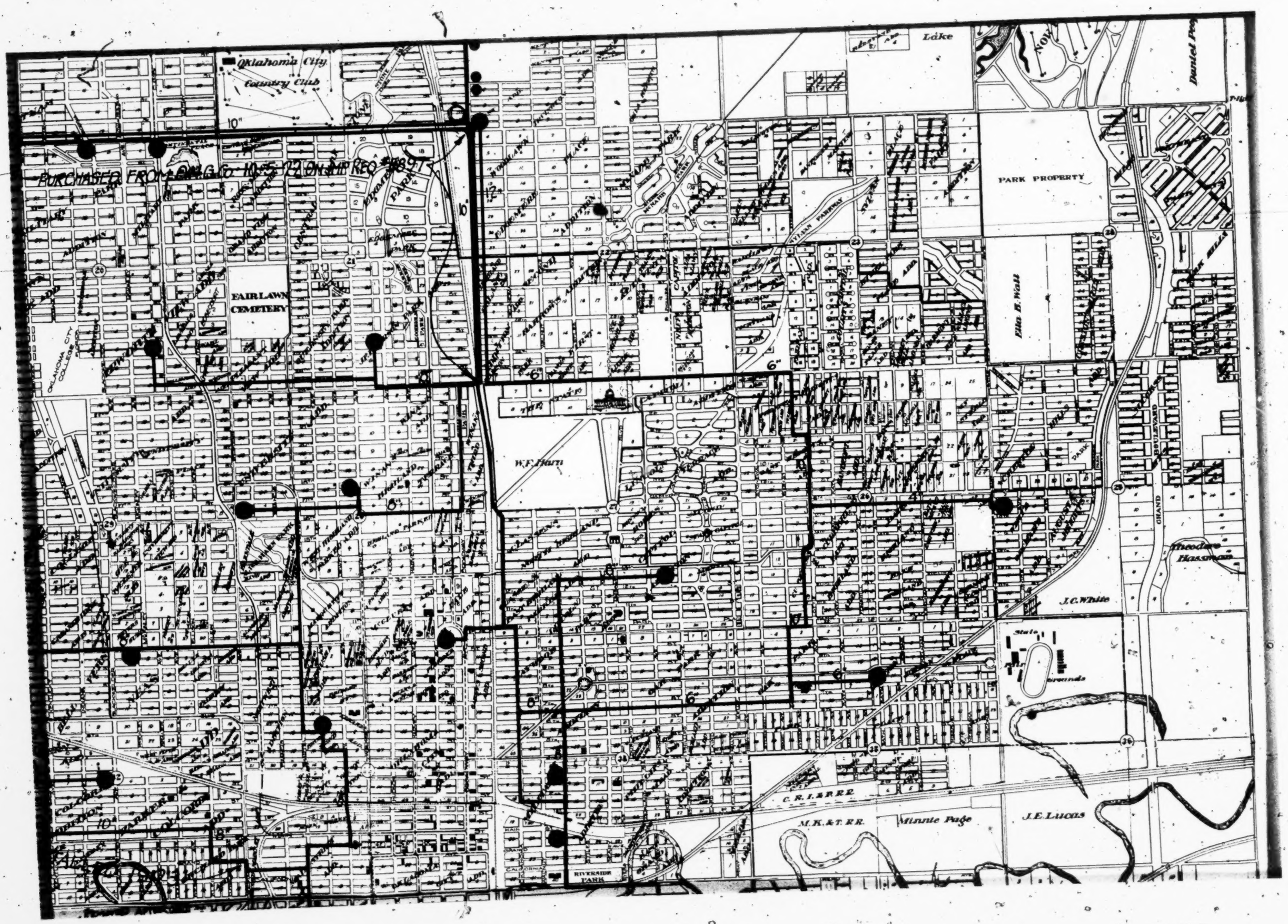
(Here follow Exhibits 3 and 4, side folios 158 & 159)

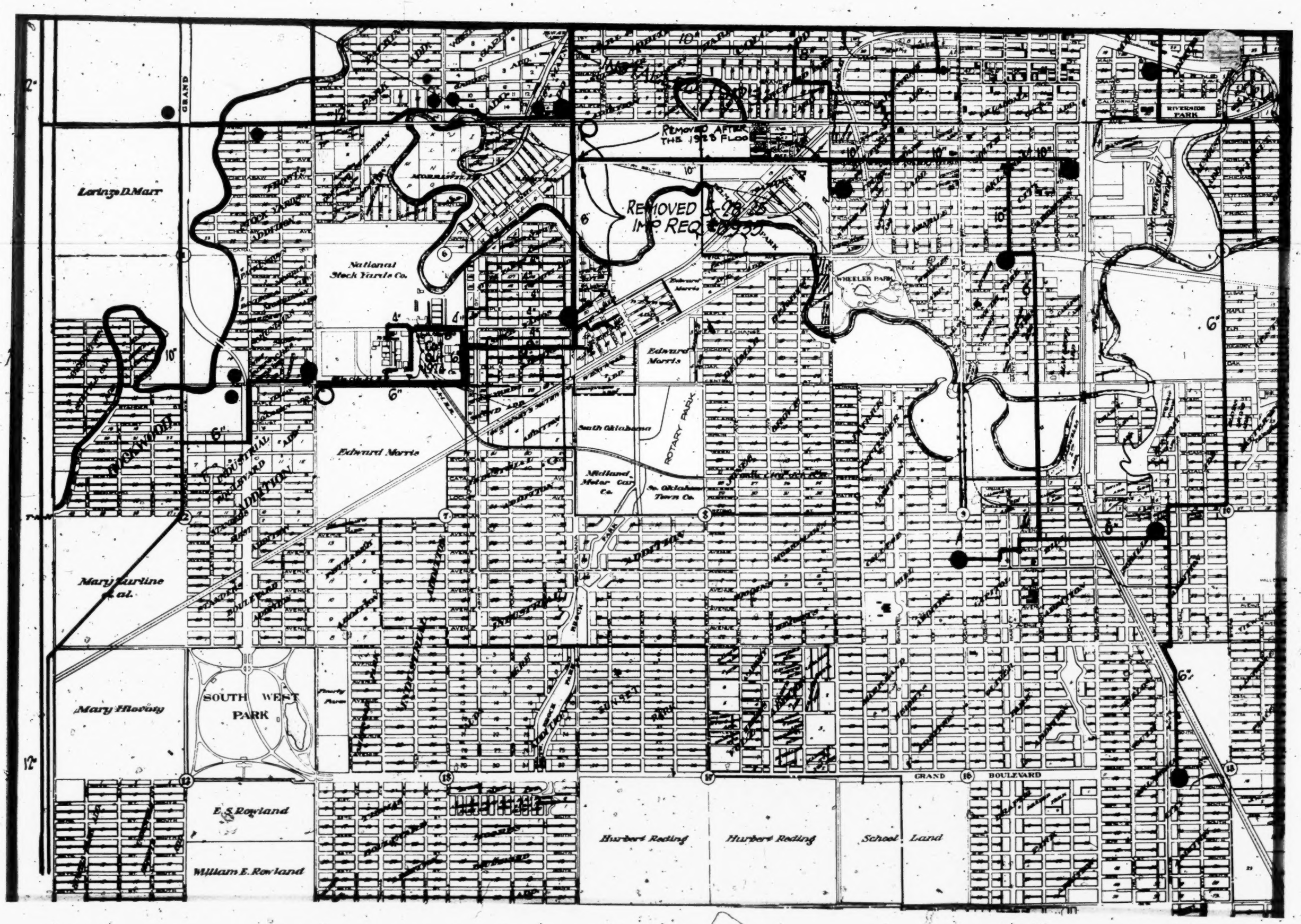

J. C. Berry
Kansas City Life Ins. Co.
Kansas City Life Ins Co.
Clara B. Wills
J. A. Bash
Fred Steppe
Fred W. Fleming
Eugena Ahrensmeyer
Agnes C. Wester
GRAND BOULEVARD
NICHOLS HILLS
ACRES
Cotton Mills Securities Co.
Commerce Trust Co. et al.
Elizabeth H. Sigil et al.
Fannie E. Luskin et al.
Fannie S. La Barn
ROSE HILL CEMETERY
Kansas City Life Ins Co.
Urban Land Co.
Margaret Architeques
Tom H. Hinton
Bellerive Improvement Co.
John Jodlowski
Leavitt & Classon
PLACE
EUCLID
John W. Sharp
Oklahoma City
Country Club

MAP
OF
OKLAHOMA CITY
OKLAHOMA




NORTH WEST PARK
C. Shepard Et al
Oklahoma City Country Club
FAIR LAWN CEMETERY
PURCHASED FROM O.N.G.Co. 10-5-12 ON Mc REQ #897
PURCHASED FROM O.N.G.Co. 6-1-99 ON Mc REQ #708
TO BE WITH O.G.E. CO. LOW PRESSURE LINES
Ella E. Smith Et al.
City Waterworks Plant
BELL
W.F. Harn
RIVERSIDE PARK
BOULEVARD
JOBAND.


Oklahoma City
Country Club
PURCHASED FROM O.C.G.C. 10-5-'17 DEED REC #8917
EXPANSION PARK
FAIR LAWN CEMETERY
OKLAHOMA CITY COLLEGE CITY
Lake
PARK PROPERTY
Ella B. Walk
CAPITOL HILL
SYLVAN PARKWAY
W.F. Harn
Daniel Webster
GRAND BOULEVARD
Meadow Hassman
J.C. White
State
Grounds
C.R.I.&P.R.R.
M.K.&T. R.R.
Minnie Page
J.E. Lucas
RIVERSIDE PARK
CALIFORNIA


GRAND
Lorinzo D. Marr
National Stock Yards Co.
Edward Morris
South Oklahoma
Midland Motor Car Co.
So. Oklahoma Town Co.
ROTARY PARK
REMOVED AFTER THE 1923 FLOOD
REMOVED 5-28-25 IMP. REQ. 8933
WHEELER PARK
RIVERSIDE PARK
Mary Fairline et al.
Mary Hovaty
SOUTH WEST PARK
E. S. Rowland
William E. Rowland
Hurbert Reding
Hurbert Reding
School Land
GRAND BOULEVARD

REMOVED AFTER THIS 1923 FLOOD

REMOVED 4-28-25 PER REQUEST OF

RIVERSIDE PARK

WHEELER PARK

ROTARY PARK

C.R.I.&R.R.R.

M.K.&T. R.R.

Minnie Page

J.E. Lucas

W.B. Hill

HAUBELT ET AL

Elizabeth Thelmer

Henry W. Jones

Elizabeth Thelmer

Elizabeth Thelmer

Ray Coppinger

Felix Lowery

Elizabeth Thelmer

W. FRANKLIN

CORFES SUBDIVISION

PARK

Clarence E. Trosper

Hugh E. Trosper

TROSPER

TROSPER PARK ADD

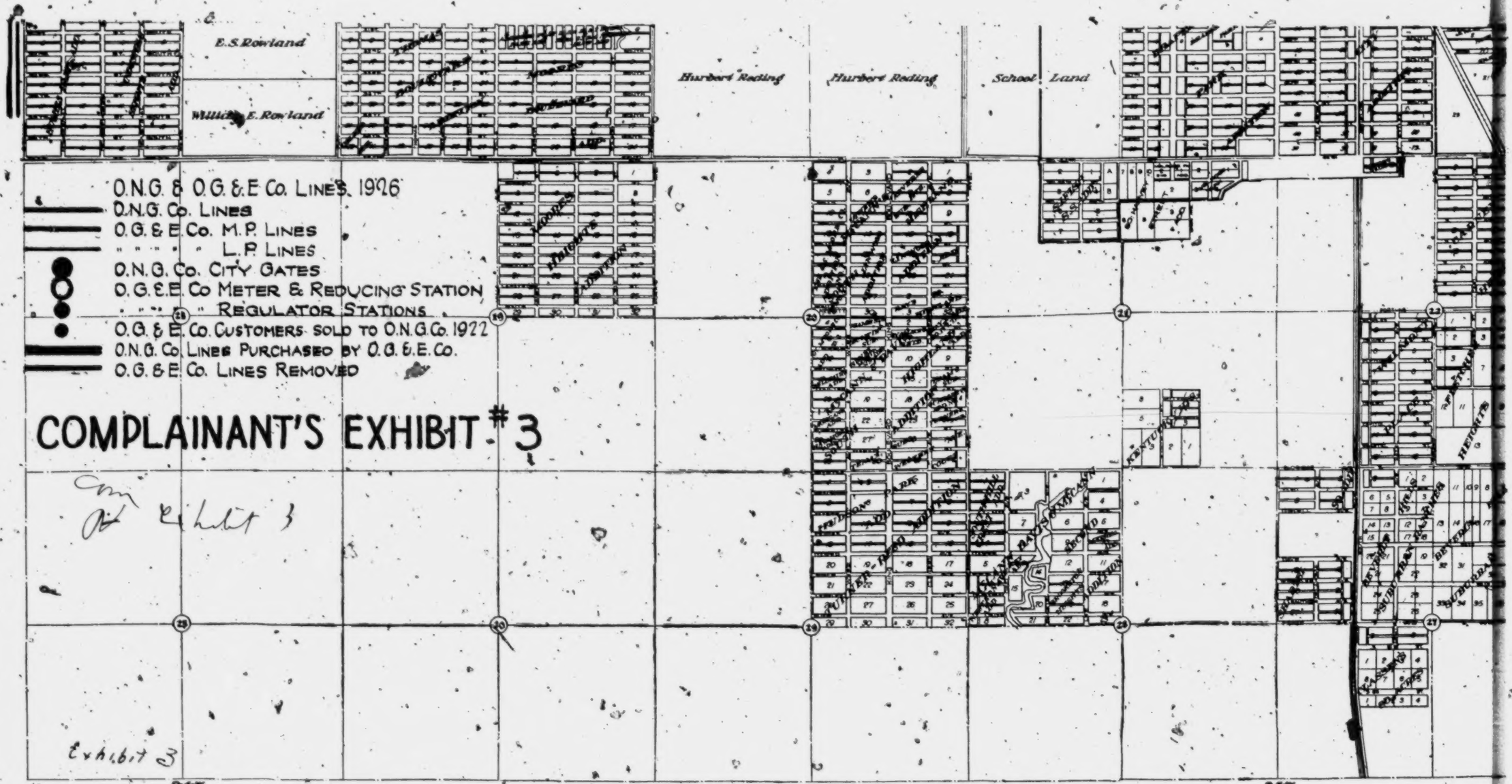
John W. Wheeler

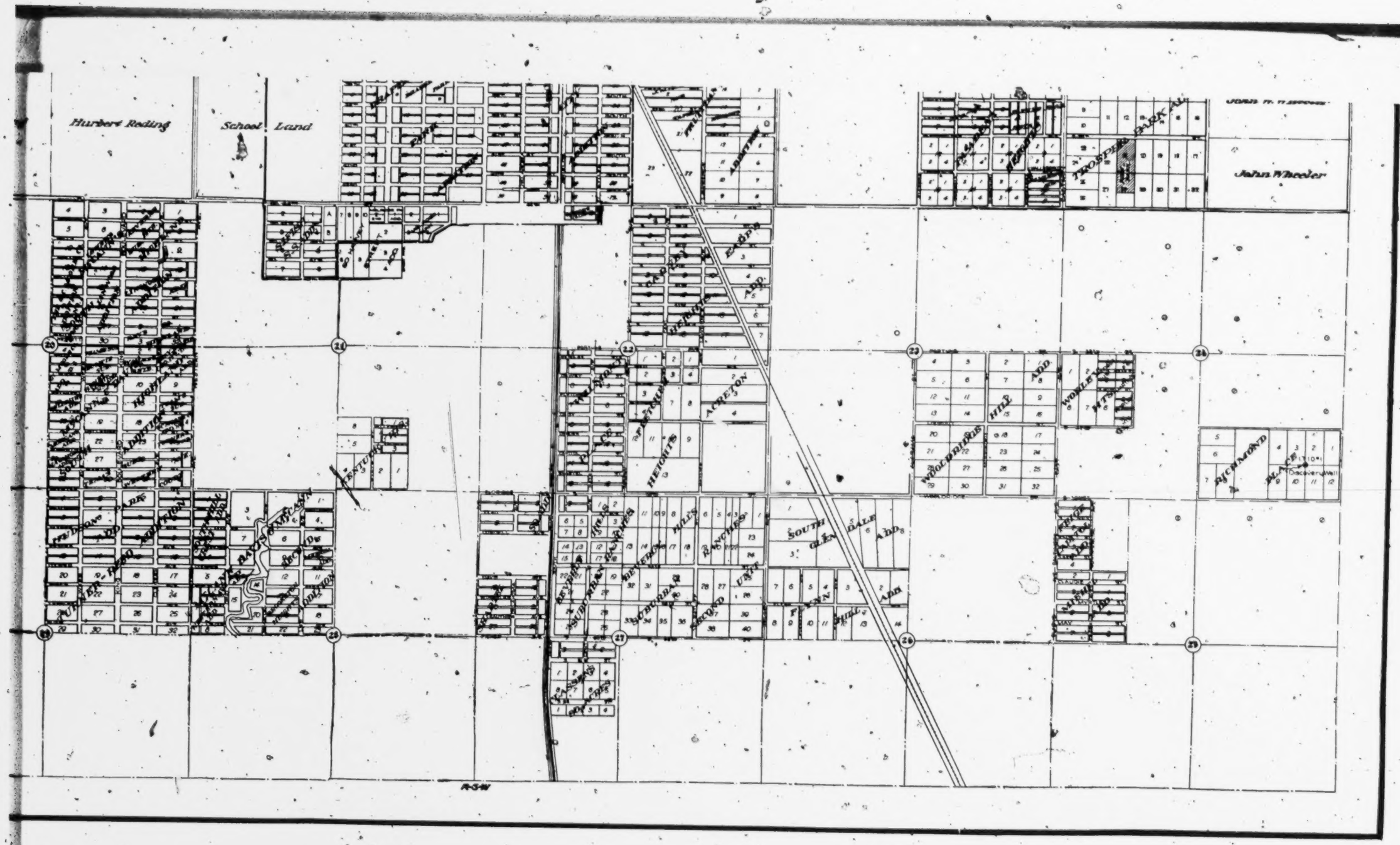
John Wheeler

Hurbert Reding

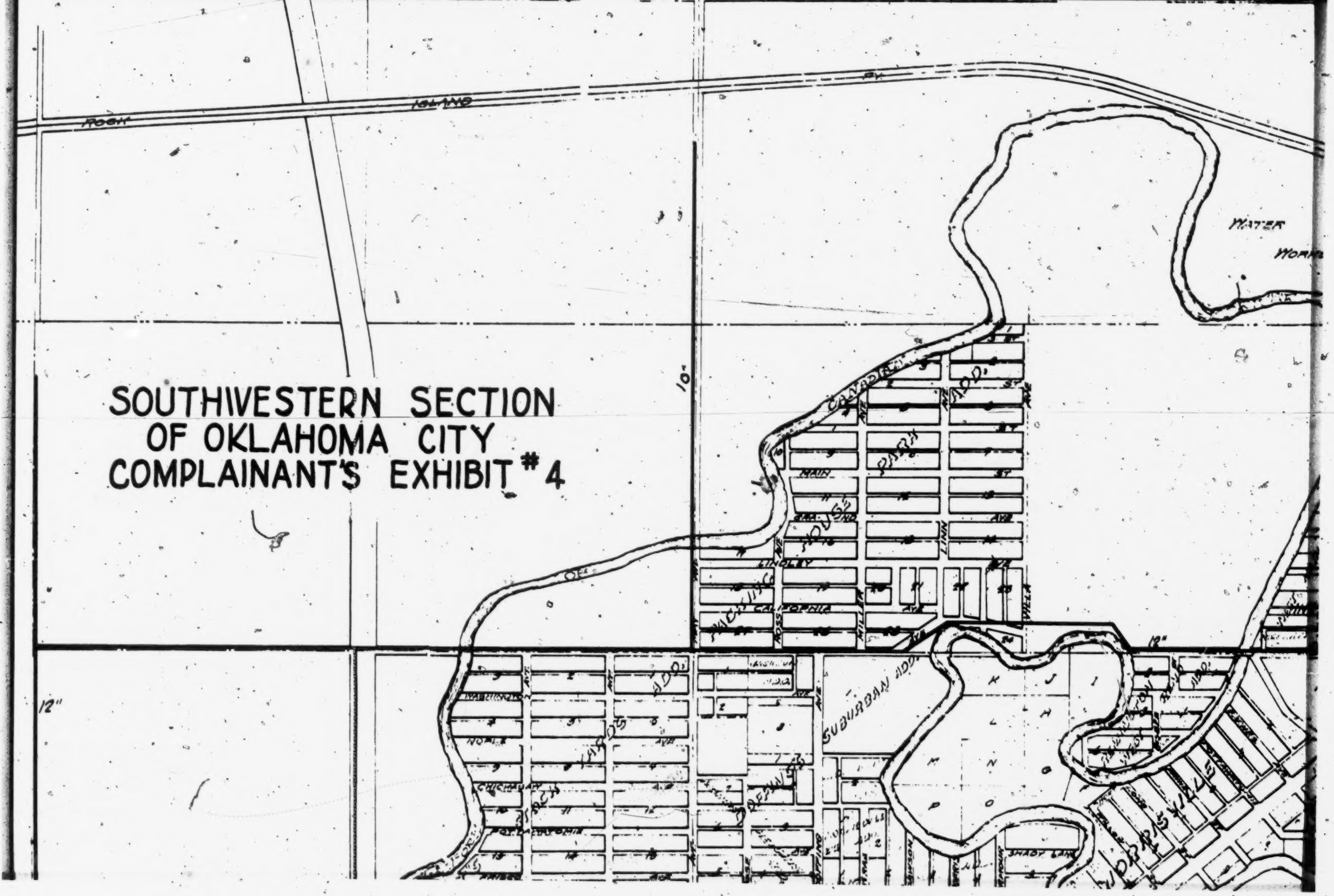
School Land

GRAND BOULEVARD


E.S. Rowland
William E. Rowland
Hurbert Reding
Hurbert Reding
School Land
O.N.G. & O.G.&E. Co. LINES. 1926
O.N.G. Co. LINES
O.G.&E. Co. M.P. LINES
" " " L.P. LINES
O.N.G. Co. CITY GATES
O.G.E.E. Co METER & REDUCING STATION
" " " REGULATOR STATIONS
O.G.&E. Co. CUSTOMERS SOLD TO O.N.G. Co. 1922
O.N.G. Co. LINES PURCHASED BY O.G.&E. CO.
O.G.&E. Co. LINES REMOVED
COMPLAINANT'S EXHIBIT #3
Exhibit 3
Exhibit 3
R-4-W
R-3-W


Hurbert Reding
School Land
John Wheeler
SOUTH GLENDALE ADD
RICHMOND PLACE
Discovery Well
A-3-W

SOUTHWESTERN SECTION OF OKLAHOMA CITY
COMPLAINANT'S EXHIBIT #4



WATER WORK'S

Installed After The 1925 Flood

Removed after the 1925 flood.

Removed 5-28-26 on Imp. Reg. #6935.

Cm 4-4

Installed 1911
Imp. Reg. 429

Installed 1914
Appl. No. 6773 G

Purchased From O.N.G. Co.
1791' of 6" Line 11-16-26.
Imp. Reg. 7526.

Purchased From O.N.G. Co.
4-3-25. Imp. Reg. 6935
2228' of 6" ab.

O.N.G. Co. Lines
O.G. & E. Co. M.P. Lines
O.N.G. Co. Lines purchased by O.G.& E. Co.
O.G. & E. Co. Lines removed
O.N.G. Co. City Gates
O.G. & E. Co. Meter & Reducing Sta.
" " " Regulator Sta.
" " " L.P. Lines

Temporary Metering Sta. After Flood 1938.

CANAL
STOCK YARDS
EXCHANGE
MAPLE
OAK
LOCUST
STANDARD
INDUSTRIAL
BOULEVARD
ANDREWS AVE
CATALPA AVE
EUDORA AVE
PACIFIC HIGHWAY NORTH

Removed 5-28-26 on Imp. Reg. #6935

STOCK YARDS

EXCHANGE

Wichita Gas & Electric Co. Station

Laid 1911 No. 459

Laid 1914 No. 6779 G

Cut out

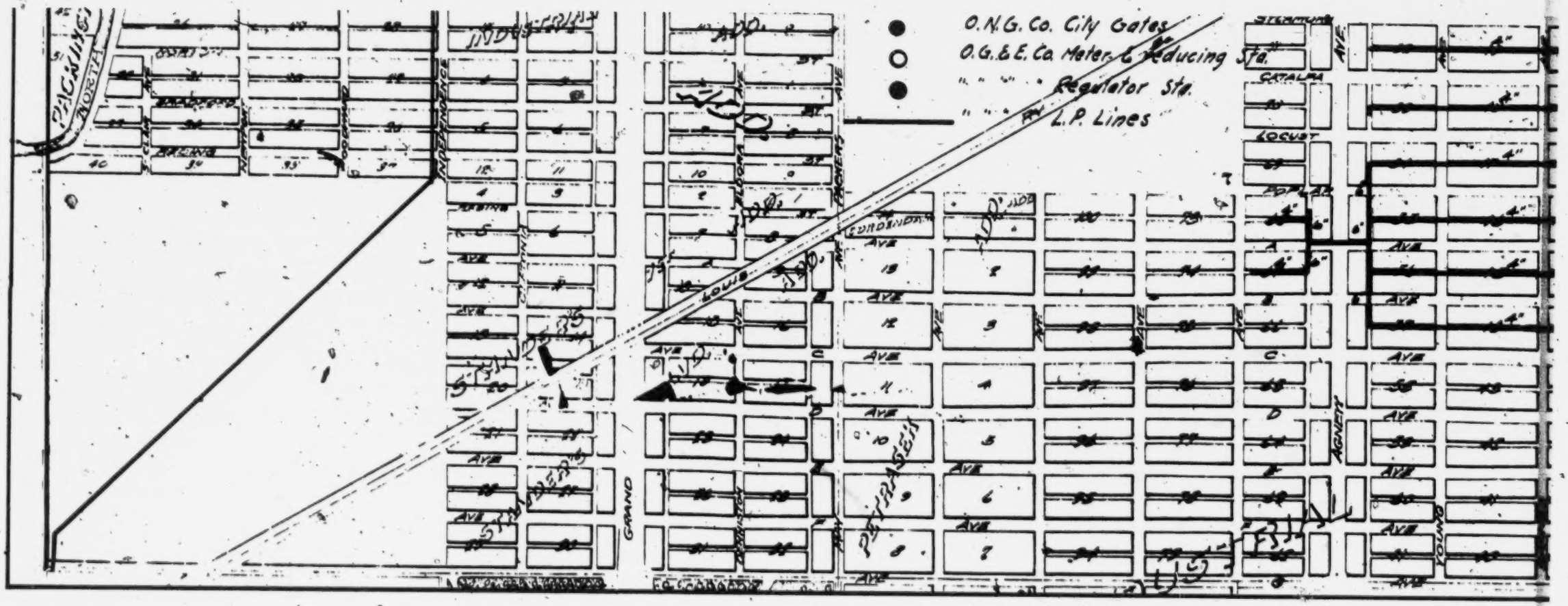
Laid From O.N.G. Co. 6" Line 11-16-26. Reg. 7526.

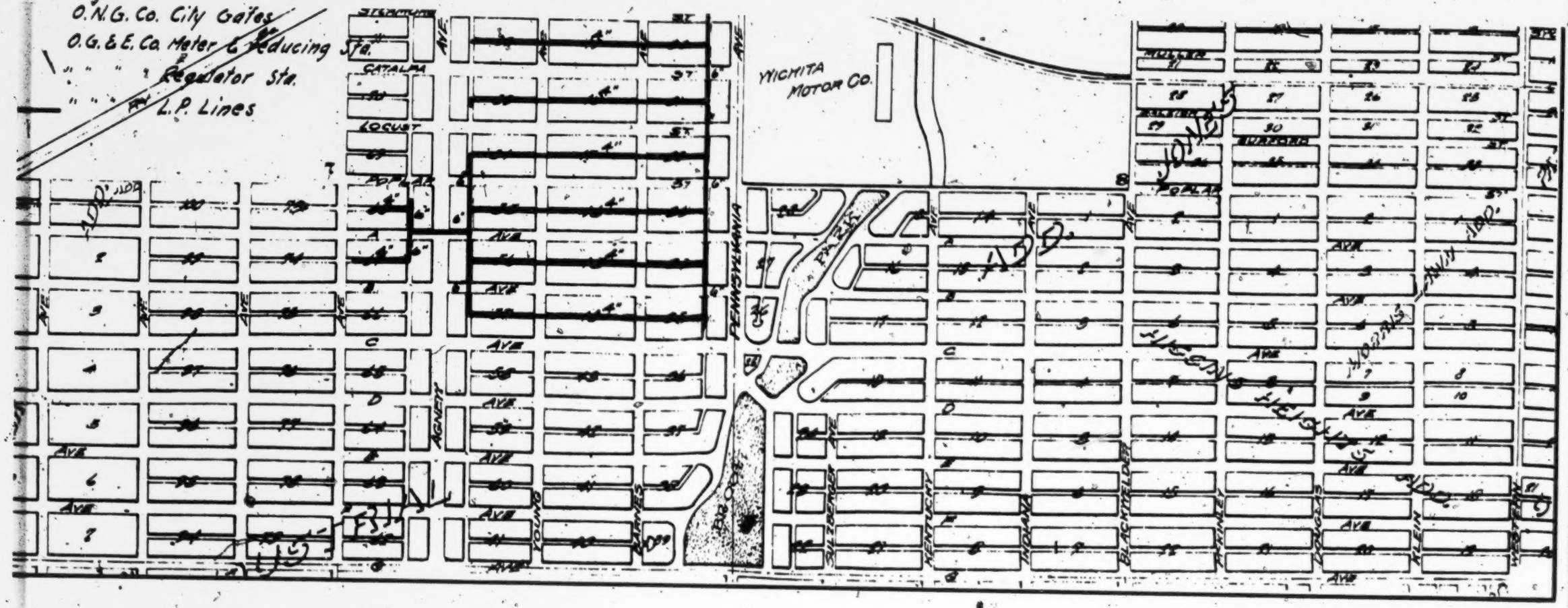
Purchased From O.N.G. Co. 4-3-25. Imp. Reg. 6935 2228' of 6" O.D.

Temporary Metering Station After Flood 1923.

Wichita Motor Co.

- O.N.G. Co. Lines
- O.G. & E. Co. M.P. Lines
- O.N.G. Co. Lines purchased by O.G. & E. Co.
- O.G. & E. Co. Lines removed
- O.N.G. Co. City Gates
- O.G. & E. Co. Meter & Reducing Sta.
- " " " Regulator Sta.
- " " " L.P. Lines


O.N.G. Co. City Gates
O.G.&E. Co. Meter & Reducing Sta.
" " " " Regulator Sta.
" " " " L.P. Lines
PACIFIC
NORTH
INDEPENDENCE
LOUIS
GRAND
HILL
OLIVE
GRAND VIEW
PARK
ST. JAMES
CATALINA
LOCUST
AGNES
ST. JAMES PL.
AVE
PL.


O.N.G. Co. City Gates
O.G.&E. Co. Meter & Reducing Sta.
" " " " Regulator Sta.
" " " L.P. Lines
WICHITA MOTOR CO.
CATALPA
LOCUST
POPLAR
PARK
PENNSYLVANIA
AGNES
YOUNG
ELMES
KENTUCKY
INDIANA
BLACKWELDER
DOUGLAS
KLEIN
HENRY
AVE
ST

[fol. 160] Testimony of R. C. Sharp

Mr. R. C. Sharp, a witness for complainants, testified that he was a resident of Tulsa, Oklahoma, and Vice-President in charge of the business policies of the Oklahoma Natural Gas Company until he resigned in January, 1928; that from 1920 until September, 1926, he was in charge of the business policies of the company; that perhaps half of his time was spent in the East but that he made all of the recommendations to the Board of Directors who held their meetings in Pittsburgh, Pennsylvania. That Oklahoma Natural Gas Company was engaged in the business of producing, transporting and selling natural gas at wholesale to distribution companies that held franchises and owned and operated distribution systems in various cities and towns within the State of Oklahoma and that the Oklahoma Natural Gas Company also held franchises and owned and operated distribution systems in about thirty cities and towns in said state.

That in September, 1926, the Oklahoma Natural Gas Company transferred all of its properties, including its franchises, to the Oklahoma Natural Gas Corporation, which succeeded to the business of the former, and the old company was dissolved.

That the Oklahoma Gas and Electric Company, which had gas franchises and owned and operated the gas distribution systems in Oklahoma City, Muskogee, Enid, Shawnee and in various other cities and towns of the State of Oklahoma and the vicinities thereof, at all times purchased all of the gas distributed and sold to its customers from the Oklahoma Natural Gas Company and its successor, Oklahoma Natural Gas Corporation, and that prior to the taking effect of the gate rate order made by the Corporation Commission of Oklahoma in June, 1921, the Oklahoma Natural Gas Company delivered the gas that it sold to the Oklahoma Gas and Electric Company and to other companies into the city distribution systems of said companies. After reducing it from high pressure to low pressure through regulator stations the local distribution companies would sell and distribute the same to its consumer [fol. 161] customers. That the local distribution companies furnished the organization and facilities for the selling, dis-

tributing and delivering of the gas and collected the sale price from their consumers and that the amount paid for said gas by the Oklahoma Gas and Electric Company under a written contract between said companies was based upon a percentage of the collections made by the Oklahoma Gas and Electric Company, to-wit, one-third of the collections for gas sold to domestic consumers and one-fourth of the collections for gas sold to industrial consumers. That under the terms of said contract the Oklahoma Gas and Electric Company had the privilege to serve and did serve all consumers it desired to serve within a radius of five miles from Oklahoma City and the other cities and towns where it operated.

That in June, 1921, the Corporation Commission of the State of Oklahoma entered what is known as "the gate rate order" dissolving the percentage contracts theretofore existing between the Oklahoma Natural Gas Company and the local distribution companies and providing that thereafter the gas sold by the Oklahoma Natural Gas Company to said distribution companies should be measured before passing into the local distribution systems and paid for on a volume basis at a designated price per thousand cubic feet.

That the Oklahoma Natural Gas Company and the Oklahoma Natural Gas Corporation did not sell gas to or serve any gas to any consumer in any city or town or in the vicinity of any city or town where it did not hold franchises and operate the distribution plants and that it never served or held itself out to serve any domestic or industrial consumers in communities where there were local distribution systems, except in cases where it was under legal liability to serve the owner of premises crossed by the Oklahoma Natural Gas Company's pipe line.

That the Oklahoma Natural Gas Company did not have a franchise to sell gas in Oklahoma City and it never served natural gas to Wilson & Co.'s packing plant near Oklahoma [fol. 162] City and that it never served any industry in the vicinity of Oklahoma City or in the vicinity of any other city or town where the Oklahoma Gas and Electric Company operated a distribution system. That Wilson & Co. was a customer of the Oklahoma Gas and Electric Company and the Oklahoma Natural Gas Company did not want to take any customers away from the Oklahoma Gas and Electric Company. That the Oklahoma Natural Gas Company

was the transporting company and the Oklahoma Gas and Electric Company was the distributing company and the Oklahoma Natural Gas Company sold the Oklahoma Gas and Electric Company all of the gas at the city gates at rates prescribed by the Corporation Commission and it in turn distributed and sold said gas to its customers at rates prescribed by the Corporation Commission. That the rate prescribed by the Commission and charged by the Oklahoma Natural Gas Company to the local distribution companies was 15¢ per thousand cubic feet for all gas in excess of one hundred thousand cubic feet per month per customer and the local distribution companies in turn charged 20¢ per thousand cubic feet on the same basis.

That after the taking effect of the gate rate order in 1921 and the installation of the meters neither the Oklahoma Natural Gas Company nor its successor, Oklahoma Natural Gas Corporation, ever served or professed to serve any gas consumer upon the lines of the Oklahoma Gas and Electric Company so located within the city gates, that is beyond the point where the gas sold by the Oklahoma Natural Gas Company was delivered to the Oklahoma Gas and Electric Company, and said gas measured at the measuring or metering stations where it passed into the distribution lines of the Oklahoma Gas and Electric Company and the same policy and practice was followed in all cases where the Oklahoma Natural Gas Company sold and delivered gas to other distribution companies within the State of Oklahoma.

The Oklahoma Natural Gas Company had franchises at Sapulpa, and Tulsa, Oklahoma, and owned and operated [fol. 163] the local gas distribution systems in said cities and the vicinities thereof as well as the transportation or transmission lines bringing the gas to said cities for distribution.

That the Oklahoma Natural Gas Company desiring to increase its sales of gas, in writing requested the Corporation Commission of Oklahoma to fix a rate schedule that would enable it to get the business of industries on its lines located in or near cities where the Oklahoma Natural Gas Company owned and operated distribution systems. That in asking a rate the Oklahoma Natural Gas Company had in mind Cosden & Company of Tulsa and two or three consumers at Sapulpa, but that the rate schedule requested of the Corporation Commission was not to apply to any places that

the Oklahoma Natural Gas Company did not own and operate the distribution systems. That under the rates prescribed by the Commission it sold gas to Cosden & Company and the Producers & Refiners Corporation, which were both located in West Tulsa, Oklahoma, and to the Sunflower Glass Company and the Sapulpa Refining Company at Sapulpa, Oklahoma, and these industries were on the Oklahoma Natural Gas Company's lines either within or just without said cities of Sapulpa and Tulsa. In this connection the witness testified:

"Q. Did the Oklahoma Natural Gas Company ever serve any industry, to your knowledge, around Oklahoma City or around any other city or town where the Oklahoma Gas & Electric Company operated the distribution system?

A. Not to my knowledge.

Q. Located within the metering stations?

A. No, sir.

Q. Did the Oklahoma Natural Gas Company serve industries during the years 1924, 1925, and up to September, 1926, located in or around cities and towns in which it operated the distribution systems?

A. Yes, sir.

[fol. 164] Q. What companies or industries, as you now recall, were served with gas in various cities and towns where the Oklahoma Natural Gas Company had the distribution system, or from the main line near those towns, during those three years?

A. Well, we were very anxious at that time to sell as much gas as possible, and could not afford to sell it for less than the wholesale price, but with the cities and towns that we could—that is the main line customers—we took them on as main line customers at the wholesale rate. There was, I believe, the Sunflower Glass Company at Sapulpa; the Sapulpa Refining Company and the Collins Glass Company.

Q. That is at Sapulpa?

A. At Sapulpa. There may have been one or two others there. And then at Tulsa there was the Cosden refinery, and I am not sure but what the Producers & Refiners.

Q. Those refineries were located in West Tulsa?

A. The later two were, yes, sir.

Q. Did the Oklahoma Natural Gas Company own and operate under a franchise the distribution system in the City of Tulsa and West Tulsa during those years?

A. Yes, sir.

Q. Did it own and operate the distribution franchise in the City of Sapulpa during those years?

A. Yes, sir."

That said rates were not intended to apply to consumers of the Oklahoma Gas and Electric Company in the vicinity of Oklahoma City or to the consumers of any other distribution plant in any city or town or the vicinity thereof which purchased its gas from the Oklahoma Natural Gas Company.

That at the time of the making of the gate rate order in 1921, and the installation of the metering or measuring stations pursuant thereto outside of the city limits of Oklahoma City but in the vicinity thereof, the Oklahoma Gas and Electric Company had a number of consumers in the vicinity of Oklahoma City on the main lines of the Oklahoma Natural Gas Company which resulted in their being outside of and beyond the metering stations and would ren- [fol. 165] der it impractical for these consumers to be served thereafter by the Oklahoma Gas and Electric Company and the Corporation Commission of the State of Oklahoma was of the opinion that since these domestic consumers were already being served with gas in their homes that the service should be continued. That the witness stated to the Corporation Commission that the Oklahoma Natural Gas Company did not want to serve or establish a precedent of taking on any consumers unless it was legally required to do so, such as where the company's pipe line crossed the property of the customer, and the Corporation Commission assured him that if the Oklahoma Natural Gas Company would continue to serve these customers that it would not be required to serve any others, and that it did thereafter continue to serve such customers. That in connection therewith the Oklahoma Natural Gas Company made an agreement with the Oklahoma Gas and Electric Company that it might serve such consumers if it so desired and that the Oklahoma Natural Gas Company should have the right to take over the facilities, such as meters and meter lines, which were employed by the Oklahoma Gas and Electric Company in serving such consumers, or if it preferred it could install its own facilities. Subsequent to that time the Oklahoma Natural Gas Company took on one other consumer, to-wit, Billy Gregg. This was at the re-

quest of Commissioner Carter of the Corporation Commission of Oklahoma who stated that Billy Gregg ran a dog hospital and requested the Oklahoma Natural Gas Company to serve him and they agreed to it.

The witness identified photostatic copies of Exhibits L, M, N, and O elsewhere set forth in full herein. The witness also testified that the Oklahoma Natural Gas Company did not require a franchise to serve gas, except within the confines of a city or town; for there was no one to issue a franchise as to customers without cities and towns. Following [fol. 166] the gate rate order the Oklahoma Natural Gas Company and the Oklahoma Gas and Electric Company had several conferences. The former had the option of taking over any customers outside the city gate stations who had theretofore been served by the Oklahoma Gas and Electric Company and the right to take over the physical property used incident to said service, or the Oklahoma Natural Gas Company could furnish its own physical equipment for that purpose. The following questions were asked the witness by respondents:

"Q. I will ask you if you didn't swear to this (in former hearing) Mr. Sharp. That under that oral agreement that you had with the Oklahoma Gas and Electric Company that you thought that you had the right to take over and serve Wilson & Co.?

A. I don't remember.

Q. Do you deny that?

A. I don't deny it; I said I don't remember.

Mr. Rainey: I will admit that he said he had the right to serve Wilson & Co."

The Oklahoma Natural Gas Company did not wish to take any customers away from the Oklahoma Gas and Electric Company, which company wishes to sell the Packingtown industries. Witness talked with the Chicago representatives of the Oklahoma Gas and Electric Company who had more to do with passing on that than anyone else, and witness represented the Oklahoma Natural Gas Company. These conferences between witness and Huey were both before and after the gate rate order was promulgated. Witness does not know whether there was any other company besides Wilson & Co. taking gas from the Oklahoma Gas and Electric Company for industrial purposes at that time.

[fol. 167] These questions were asked the witness by respondents:

"Q. How did the question of your serving Wilson & Co. come up?

A. Well, we were discussing all of the industrial consumers and naturally we knew that we could sell them direct if they would allow us to have those consumers and sell them direct. We would give them the same price that we were selling other people.

Q. You would have gotten the same price for your gas?

A. Yes, sir. * * *

Q. In other words, it would not have been a dime out of your pocket?

A. But we couldn't afford to sell them if they objected to it.

Q. But it wouldn't have been a dime out of your pocket?

A. No, sir. * * *

Q. Why couldn't you serve them yourself?

A. I don't remember now why.

By Mr. Bennett:

Q. Mr. Sharp, at any rate, due to what you told him Mr. Hughie went ahead and served Wilson & Co. direct?

A. Yes. I might have asked him for Wilson & Co. and the other packing companies and he might have said that we were not entitled to them, but we were very anxious to get this city gate rate into effect. * * *

Q. Tell me what was the reason for not giving them service?

A. We either didn't, as I remember it, because we were not obligated to serve you or felt that we couldn't serve you over their objection. Now, I don't know——

Q. Now, were they objecting to it?

A. Why, naturally they would want to keep their customers.

By Mr. Bennett:

Q. You didn't want to take them over and serve them direct because the Oklahoma Gas and Electric Company was your biggest customer in the state?

A. We were either not entitled to the account, which I am not familiar with as to the exact location to know

whether we would be, or whether it was considered at the time that the Oklahoma Gas and Electric Company would retain the packing town business, I don't know.

Q. Was there then a provision or condition in your talk with Mr. Hughie that they should retain the packing house business?

[fol. 168] A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. There might have been?

A. There might have been."

The Oklahoma Natural furnished to the Oklahoma Gas and Electric Company all the gas which it furnished to its customers and there was no other gas company furnishing gas at Oklahoma City.

By Mr. Bennett:

"Q. You knew that they (Wilson & Co.) would have to pay twenty cents where you could furnish the same gas for fifteen cents?

A. Yes. * * *

Q. Mr. Sharp there was no economic reason why you should not have served Wilson & Company?

A. No."

[fol. 169] SUMMARY OF DEFENDANTS' EXHIBITS "A" TO "K"

The defendants introduced the following exhibits:

Exhibit "A". A certified copy of the complaint filed by Wilson & Co. Inc., against Oklahoma Gas & Electric Company and Oklahoma Natural Gas Company, with the Corporation Commission of the State of Oklahoma, in Cause No. 7052. (Not recopied herein, for the reason that a true copy thereof is attached to complainants' Bill of Complaint herein as Exhibit "A".)

Exhibit "B". A certified copy of the findings of fact and order in said Cause No. 7052, by the Corporation Commission of the State of Oklahoma. (Not recopied herein for the reason that a true copy thereof is attached to complainants' Bill of Complaint herein as complainants' Exhibit "B".)

Exhibit "C". A certified copy of the notice of appeal to the Supreme Court of the State of Oklahoma, from the Corporation Commission of said State, by Oklahoma Gas and Electric Company, in said Cause No. 7052. This was a formal, written notice of an appeal from Order No. 3388, entered on the 13th day of April, 1926, to the Supreme Court of the State of Oklahoma, and filed with the Corporation Commission April 22, 1926.

Exhibit "D". A certified copy of the application of the Oklahoma Gas and Electric Company to suspend the operation of Order No. 3388, issued in Cause No. 7052, April 13, 1926, and to fix the term and amount of a supersedeas bond, to suspend the operations of said order pending disposition on appeal therefrom, to and by the Supreme Court of the State of Oklahoma.

Exhibit "E". A certified copy of a notice by Wilson & Co. Inc., to Oklahoma Gas and Electric Company and Oklahoma Natural Gas Company, of the willingness of Wilson & Co. Inc. of Oklahoma, to take over and purchase the present service line owned by Oklahoma Gas and Electric Company, and used for serving Wilson & Co., all as provided for in said Order No. 3388, of the Corporation Commission, in said Cause No. 7052. In this written notice it [fol. 170] is set out that the service line is only about four or five hundred feet in length, and that its value can quickly be ascertained, and also setting out that if the line cannot be purchased, that Wilson & Co., would proceed to lay and install at its own expense its own service line direct from the supply line of the Oklahoma Natural Gas Company, on Ash Avenue, to the boiler-room of said Wilson & Co., as required by the order aforesaid. This notice was filed with the Commission April 23, 1926, and shows service on the two gas companies as indicated by the indorsement of their respective attorneys of record, April 19, 1926.

Exhibit "F". A certified copy of Journal Entry No. 1453, of the Corporation Commission of the State of Oklahoma, in Cause No. 7052, being an order allowing the appeal of the Oklahoma Gas and Electric Company to the Supreme Court of Oklahoma, and fixing the amount of the supersedeas bond in the sum of $25,000.00. This is a formal Journal Entry, reciting the rendition of its Order No. 3388, by the Corporation Commission, directing Oklahoma Natural

Gas Company to serve fuel gas direct to Wilson & Co., and setting out that the main line of the Oklahoma Natural Gas Company was within one hundred and fifty yards of Wilson & Co., and that Wilson & Co., be allowed to connect up with such main line, and requiring that gas be furnished said company for fuel, at 35¢ per thousand cubic feet for the first 100,000 cubic feet, and at 15¢ per thousand cubic feet for any remaining quantity, provided that the consumption should be not less than fifteen million cubic feet for any one month; also setting out that the Oklahoma Gas and Electric Company had on April 22, 1926, filed its notice of appeal to the Supreme Court of Oklahoma, and applying for supersedeas to stay the effectiveness of said Order No. 3388, pending said appeal. Upon consideration whereof, the appeal aforesaid was allowed, and the effectiveness of said Order No. 3388, was ordered superseded, upon the filing of [fol. 171] a $25,000.00 bond by Oklahoma Gas and Electric Company, conditioned to repay Wilson & Co. Inc. of Oklahoma, all amounts collected by Oklahoma Gas and Electric Company for gas in excess of the rate established by said Order No. 3388. It is therefore adjudged that said Order No. 3388, be stayed and superseded upon the filing of said bond. This order was made April 27, 1926.

Exhibit "G". A certified copy of a formal Journal Entry No. 1452, dated April 27, 1926, and filed with the Corporation Commission in Cause No. 7052, reciting the entry in said cause of Order No. 3388, requiring Oklahoma Natural Gas Company to serve Wilson & Co., direct with natural gas at the rate of 35¢ per thousand cubic feet, for the first 100,000 cubic feet, and at 15¢ per thousand cubic feet for any excess, provided the consumption amounted to fifteen million cubic feet per month. The Journal Entry further sets out that the Oklahoma Natural should be allowed to appeal to the Supreme Court of the State of Oklahoma, and the effectiveness of said Order No. 3388, should be suspended and superseded, and the fourth grammatical paragraph of said Journal Entry is as follows:

"The Commisson is of the opinion that since the Oklahoma Gas and Electric Company has been permitted to also supersede this same order, and required to post a bond in the sum of $25,000.00, protecting plaintiff in any amounts charged and collected for gas, pending the appeal, in excess

of the rate established by said order, that the Oklahoma Natural should also be granted supersedeas and that since the Oklahoma Natural Gas Company is not at this time supplying plaintiff and will collect no moneys for gas supplied, that a nominal supersedeas bond is all that should be required."

And, the Commission orders the Oklahoma Natural Gas Company to file a bond in the sum of One Thousand Dollars, conditioned upon the payment of any damages which may be shown to have resulted to plaintiff (Wilson & Co. Inc.), from said appeal.

Exhibit "H". A certified copy of a supersedeas bond, in the sum of $25,000.00, executed by Oklahoma Gas and Electric Company, as principal, and Fidelity & Casualty Company of New York, as surety, payable to Wilson & Co. [fol. 172] Inc., in Cause No. 7052; (a copy of this bond is attached to defendant's, Oklahoma Packing Company, answer filed herein, marked Exhibit "A" and will not be recopied here).

Exhibit "I". A certified copy of an additional or supplemental supersedeas bond, in the sum of $15,000.00, executed by Oklahoma Gas and Electric Company and Fidelity & Casualty Company of New York, as surety, payable to Wilson & Co., Inc., and filed in the Supreme Court of Oklahoma, in Cause No. 17,859, which is the appeal in that Court of Cause No. 7052, from the Corporation Commission, aforesaid. (A copy of this bond is attached to defendant's, Oklahoma Packing Company, answer herein, marked Exhibit "B" and will not be recopied here.)

Exhibit "J". A certified copy of an additional or supplemental supersedeas bond, in the sum of $10,000.00, executed by Oklahoma Gas and Electric Company, as principal, and Fidelity & Casualty Company of New York, as surety, payable to Wilson & Co. Inc., and filed in the Supreme Court of Oklahoma in Cause No. 17,859, which is the appeal of Cause No. 7052, from the Corporation Commission of Oklahoma, aforesaid. (A copy of this bond is attached to defendant's, Oklahoma Packing Company, answer herein, marked Exhibit "C", and will not be recopied here.)

Exhibit "K". A certified copy of the opinion of the Supreme Court of Oklahoma, in Cause No. 17,859, entitled Oklahoma Gas and Electric Company, et al., vs. Wilson & Co., Inc., et al., reported in 146 Okla. 272, 288 Pac. 316. (Since this opinion appears in the official volumes of the Oklahoma Supreme Court Reports, and also in the Pacific Reporter, said exhibit will not be recopied herein, but is made part hereof by reference.)

Exhibit "L". Copy of an original letter from Oklahoma Natural Gas Company to the Corporation Commission of the State of Oklahoma, as follows:

DEFENDANTS' EXHIBIT "L"

"Oklahoma Natural Gas Company, Tulsa, Okla.

Cause 6030

O. N. G. Co.

R. C. Sharp, Vice President

September 12, 1924.

Corporation Commission, Oklahoma City, Oklahoma.

[fol. 173] Attention of Mr. Frank C. Carter, Chairman

DEAR SIR: At the conference held yesterday with Commissioners Joe B. Cobb and E. R. Hughes, also the Commission's attorney, Judge Ratliffe, Henry Wilmering, Auditor, and B. P. Stockwell, Engineer, it was explained to the Commission by Judge Richardson that putting the new industrial rate into effect would have no bearing in any way on your case against the Oklahoma Natural Gas Company, which you have set for hearing September 17th. This, of course, Judge Ratliffe understood thoroughly, as your case would be based on the facts of the past year and not on what may be accomplished in the future.

After the conference was over, Commissioner Hughes stated that he would approve the rates and Commissioner Cobb decided that he would take it under advisement and let us know later in the afternoon or the next morning. This morning he informed us by telephone from Shawnee that he would concur with Commissioner Hughes, and sug-

gested that as you did not attend the conference that I write you a letter setting forth my statements at the conference.

In the first place, why not let the cities and towns of Oklahoma have the benefit of as much of the industrial gas as possible? In one of the Bristow fields the Empire is taking more than three times as much gas as we are, which gas goes to Kansas, where they get a very much higher price for their domestic gas and even a lower price for industrial than we have named. In the southern part of the state, the Lone Star is buying gas from the same field that we are and are taking it to Dallas, Fort Worth and other Texas cities and towns, and are getting 75 cents for domestic gas, with a minimum industrial rate of 16 cents.

We would not for a minute ask to reduce the industrial gas rate were it not to try to save what industrial trade we now have, as industrial gas is sold in competition with fuel oil, the price of which is very low, due to the depression in the oil market, and it is simply a matter of dollars and cents as to whether a consumer uses oil or gas. We believe that the increased volume of business that we can secure at the reduced prices will exceed our present profit from industrial sales, and it surely will be better to sell what industrial gas we can sell at the prices named in the schedule filed with you September 2nd, than not to sell any.

We realize that it is our duty at all times to give the domestic consumer first call on our service, which, of course, is also a drawback in getting certain industrial consumers as they do not like the idea of possibly having to change any day without notice. We advised the Commission at the conference that we, of course, at all times kept in close touch with our supply and should the supply at any time decrease to where the domestic service was in any danger we would at once discontinue industrial service.

We advised the Commission at the conference that while we had asked permission to make effective September 1st the schedule submitted to you in the form of a letter dated September 2nd, that since the matter had not been passed upon as yet we would like, in case of a favorable decision, to make the rates effective September 15th, that is the first 15 days of September being on the old rate and the last 15 days being on the new rate, as that would be very much

easier figured for our distribution plants. This suggestion was also made partly in consideration of the Oklahoma Gas & Electric Company, who advised that as they read meters and bill every day, that it would cause them additional labor and expense to re-bill and rebate back to September 1st.

I believe you understand our position in this matter thoroughly, and those representing the Corporation Commission at the conference seemed to understand it. You realize, of course, that the overhead charges, the property used and useful in serving the domestic consumer go on just the same, whether any industrial gas is sold, and that [fol. 174] on account of climatic conditions in this state, where there is really only three months domestic business out of twelve, that it is good business for all concerned to move such industrial gas as possibly can be moved at a profit.

Very truly yours, Oklahoma Natural Gas Company,
by R. C. Sharp, Vice President."

RCS-O.

Exhibit "M". A certified copy of Journal Entry No. 1203, in Cause No. 6030, of the Corporation Commission of the State of Oklahoma, which is as follows:

DEFENDANTS' EXHIBIT "M"

"Journal Entry No. 1203—Cause No. 6030

In the Matter of Rates Charged for Natural Gas for Industrial Purposes Only, by the Oklahoma Natural Gas Company in Its General System and Enid System, Excluding Claremore, Inola and Ramona.

On the 2nd day of September 1924, the Oklahoma Natural Gas Company, a public utility engaged in the transportation, distribution and sale of natural gas within the State of Oklahoma, presented its application to the Corporation Commission for authority to amend its present schedule of rates on its general system and Enid system, excluding Claremore, Inola and Ramona, for natural gas for industrial purposes, by the establishment of the following schedule of rates, to-wit:

City Gate Rate

First 100 M cu. ft. per customer per month 38c per M cu. ft. net.

All over 100 M cu. ft. per customer per mo. 15c per M cu. ft. net.

For the Cities and Towns Served by the Oklahoma Natural Gas Company Directly

For the first 100 M cu. ft., the present domestic rate.

All over 100 M cu. ft. per customer per month 18c per M cu. ft.

For this classification of service, 2c per M cu. ft. shall be charged as a penalty on bills not payable on or before ten days after rendition thereof.

For industries located outside of the corporate limits of the towns and cities served by the Oklahoma Natural using thirty million cubic feet or more per month, at the city gate rate as above.

It is stated in the application to the Commission that the present industrial consumption of the Oklahoma Natural Gas Company's total output is approximately five per cent, and that the price of fuel oil is such that the company is rapidly losing such industrial consumption as it now has, and that the object in presenting this application is to increase the industrial sales to the end that same will not be entirely lost to the company and to thus lessen the burden upon the domestic consumer to that extent.

It is represented that the present supply of natural gas available to the Oklahoma Natural Gas Company is ample; that in the Chickasha gas field, which is probably the largest source of supply in the state, the company is only able to take substantially seven-tenths of one per cent of the gas offered under the contracts with the producers in that territory.

The Commission on this the 16th day of September, 1924, having the matter under consideration and having conferred with some of the cities affected, together with its own representatives as to the advisability of the action requested, is of the opinion and finds that the relief petitioned for by the Gas Company should be allowed, and that [fol. 175] the industrial rate prayed for in said application should be in all things granted and the schedule of

rates submitted, adopted, effective as of September 15, 1924.

It is therefore the order of the Commission, premises considered, that on and after September 15, 1924, the Oklahoma Natural Gas Company be and it is hereby authorized to put into effect the following schedule of industrial rates for industrial consumers located on its general system and Enid system, excluding Claremore, Inola and Ramona, as follows, to-wit:

City Gate Rate

First 100 M cu. ft. per customer per month 38c per M cu. ft. net.

All over 100 M cu. ft. per customer per mo. 15c per M cu. ft. net.

For the Cities and Towns Served by the Oklahoma Natural Gas Company Directly

For the first 100 M cu. ft., the present domestic rate.

All over 100 M cu. ft. per customer per month 18c per M cu. ft.

For this classification of service, 2c per M cu. ft. shall be charged as a penalty on bills not paid on or before ten days after rendition thereof.

For industries located outside of the corporate limits of the towns and cities served by the Oklahoma Natural using thirty million cubic feet or more per month, at the city gate rate as above.

This rate to be in effect from and after September 15, 1924.

Done at Oklahoma City this the 16th day of September, 1924.

F. C. Carter, Chairman; Joe B. Cobb, E. R. Hughes.

Exhibit "N". Copy of an original letter from Oklahoma Natural Gas Company to Corporation Commission of the State of Oklahoma, which is as follows:

DEFENDANTS' EXHIBIT "N"

"Oklahoma Natural Gas Company, Tulsa, Okla.

O. N. G. Co.

R. C. Sharp, Vice President

November 22, 1924.

Corporation Commission, Oklahoma City, Okla.

GENTLEMEN: In the journal entry which you made the sixteenth day of September, 1924, fixing the price of industrial gas, the eighth paragraph reads as follows:

'For industries located outside of the corporate limits of the towns and cities served by the Oklahoma Natural using thirty million cubic feet or more per month, at the city gate rate as above.'

We have a chance to get three consumers outside of the city limits of Sapulpa (glass works), who could use the service at the rate, but cannot use as much as thirty million feet a month. They use from fifteen to twenty million, but it would take a fifteen million per month limit to get their business. However, the three accounts that we would get there would amount to some 50 million, or thereabout, a month.

[fol. 176] We, therefore, ask you to allow us to take on these three accounts, or reduce the minimum for the system from 30 million, as mentioned in the paragraph quoted, to 15 million. We also believe that this same condition will develop at other points.

Very truly yours, Oklahoma Natural Gas Company,
by R. C. Sharp, Vice President.

RCS-O.

Endorsements: 6030 O K Hughes & Carter F C Carter"

Exhibit "O". A certified copy of Journal Entry No. 1239, in Cause No. 6030, made by the Corporation Commission of the State of Oklahoma, which is as follows:

DEFENDANTS' EXHIBIT "O"

"Journal Entry No. 1239—Cause No. 6030

(Supplementing Journal Entry No. 1203 of September 16, 1924)

In the Matter of Rates Charged for Natural Gas for Industrial Purposes Only, by the Oklahoma Natural Gas Company in Its General System and Enid System, Excluding Claremore, Inola and Ramona

On the 16th day of September, 1924, the Corporation Commission upon application of the Oklahoma Natural Gas Company, a public utility engaged in the business of the transportation and distribution of natural gas within the State of Oklahoma, wherein an industrial rate lower than that theretofore obtaining, was petitioned for, The Journal Entry in question permitted the Oklahoma Natural to apply a reduced industrial rate in order to secure additional industrial business which it was represented would add to the gross revenues of the Company's business, without adding to operating expense, except for the cost of gas.

Now on this the 24th day of November, 1924, the Oklahoma Natural Gas Company represents that paragraph eight (8) of said Journal Entry No. 1203, should be modified and changed so as to provide the same rate for smaller quantities of natural gas than that covered by the original Journal Entry. It is suggested that for industries located outside of the corporate limits of the towns and cities served by the Oklahoma Natural that the quantity necessary to be used in order to secure the adjusted rate, should be reduced from 30 million cubic feet or more per month, to a consumption of 15 million cubic feet or more per month; that quantity to take the rate at the city gate as set forth in said Journal Entry.

The Commission having the matter under consideration, is of the opinion and finds that the modification should be made as suggested and that the rate charged for industries located outside of the corporate limits of the towns and cities served should be for the use of 15 million cubic feet

or more per month, the same as the rate charged at the city gate as outlined in said order.

It is therefore the order of the Commission, premises considered, that for industries located outside of the corporate limits of the towns and cities served by the Oklahoma Natural Gas Company, using 15 million cubic feet of natural gas or more per month, the rate shall be:

For the first 100,000 cu. ft. per customer per month, 38¢ per thousand cubic feet, net.

For all in excess of 100,000 cu. ft. per customer per month, 15¢ per thousand cubic feet, net.

Done at Oklahoma City, this the 25th day of November, 1924.

F. C. Carter, Chairman; Joe B. Cobb, E. R. Hughes.

[fol. 177] SUMMARY OF DEFENDANTS' EXHIBIT "P"

Exhibit "P". A certified copy of the Journal Entry of Judgment of the District Court of Oklahoma County, Oklahoma, filed April 6, 1933, in Cause No. 71,898, entitled Wilson & Co. Inc., plaintiff, vs. Oklahoma Gas & Electric Co., and Fidelity & Casualty Company of New York, defendants. This is a formal Journal Entry, announcing the appearance of the parties, a partial trial to a jury, which was thereafter waived upon agreement that the Court should try the case upon all the issues. After setting forth the findings of fact and the conclusions of law, the Court finds that the plaintiff is entitled to and the Court renders judgment for a sum of money equal to the difference between the amounts paid by Wilson & Co. Inc. of Oklahoma, to the Oklahoma Gas and Electric Company for gas, pending the suspension of said Order No. 3388, and the amount that said Wilson & Co. would have paid for gas at the rate fixed in said Order No. 3388, if said order had not been suspended.

Exhibit "Q". A certified copy of a voluntary rate schedule for gas to large industrial users, and applicable to the entire system of Oklahoma Natural Gas Company, filed by said company with the Corporation Commission of the State of Oklahoma. This establishes a sliding schedule, giv-

ing to industries consuming thirty million cubic feet per month a flat rate of 10¢ per thousand cubic feet. This rate effective July 1, 1930, and which exhibit is as follows:

DEFENDANTS' EXHIBIT "Q"

"Oklahoma Natural Gas Corporation

O. C. C. No. 1

4th Revised Sheet No. 3A, Cancelling 3d Revised Sheet No. 3A; Applies to Entire System Okla.

Large Industrial Gas Service

Available for Industrial Consumers

Rates:

First 100 M. Cu. Ft. per mo.	35¢ per M. Cu. Ft.
Next 1,900 M. Cu. Ft. per mo.	15¢ per M. Cu. Ft.
Next 2,000 M. Cu. Ft. per mo.	12¢ per M. Cu. Ft.
Next 6,000 M. Cu. Ft. per mo.	11¢ per M. Cu. Ft.
Next 20,000 M. Cu. Ft. per mo.	10¢ per M. Cu. Ft.

When the gas consumption per month exceeds 30,000 M. Cu. ft. the rate of 10¢ per M. Cu. ft. shall apply to all gas consumed during said month.

Special terms & Conditions. Service under this rate is subject to discontinuance without notice in case the supply of gas is inadequate to meet domestic demands.

This rate subject immediate discontinuance on cancellation of existing agreements with producers for gas at less than general field prices on main line system.

[fol. 178] Issued July 1, 1930. Effective July 1, 1930.

Rates authorized by 2112 4796 (as later modified by voluntary reduction).

Issued by Frank M. Long, Vice-President, Tulsa, Okla."

Defendant, Wilson & Co., then introduced in evidence all the pleadings in Cause No. 31,698, in the District Court of Oklahoma County, Oklahoma, in which suit Wilson & Co. Inc. of Oklahoma, was plaintiff, and the Oklahoma Gas and Electric Company and Fidelity & Casualty Company of

New York, were defendants, resulting in the judgment shown by Exhibit "P" herein. Wilson & Co., after formal allegations as to the corporate existence of the various parties, alleged the making of Order No. 3388, in Cause No. 7052, by the Corporation Commission of the State of Oklahoma, the affirmance of said order upon appeal by the Supreme Court of Oklahoma, the execution and filing of the supersedeas bonds by the Oklahoma Gas and Electric Company, as principal, and Fidelity & Casualty Company of New York, as surety, hereinbefore referred to as Exhibits "H", "I" and "J"; that Wilson & Co., was equipped for and had been using gas as a fuel for many years; that the Oklahoma Natural Gas Company, and the Oklahoma Gas and Electric Company were the only available sources of supply; that when Order No. 3388, aforesaid, was suspended and superseded, Wilson & Co., was compelled to buy gas from Oklahoma Gas and Electric Company, and to pay therefor substantially 5¢ per thousand cubic feet in excess of the price for gas fixed in said Order No. 3388; that each of the said supersedeas bonds had been breached, and the plaintiff thereby became entitled to recover on the same. It was further alleged that the Oklahoma Natural Gas Company had no real substantial interest in the controversy, since if they served Wilson & Co., they would have received the exact amount therefor that they would receive if they sold the same to Oklahoma Gas and Electric Company; that Wilson & Co., were outside the city limits, and on the line of the Oklahoma Natural Gas Company; that the litigation before the Corporation Commission in Cause No. 7052, and thereafter on appeal to the Supreme Court of the State of Oklahoma, in Cause No. 17,859, was all prosecuted on the [fol. 179] part of the Oklahoma Gas and Electric Company, and of the Oklahoma Natural Gas Company, for the sole benefit of the Oklahoma Gas and Electric Company, who received all the profit from suspending said Order No. 3388, and who alone was responsible for the loss of Wilson & Co., by such suspension; that the supersedeas bonds, aforesaid, covered only a part of the loss sustained by Wilson & Co., by reason of the suspension of such order; plaintiff also set out certain reasons why additional supersedeas bonds were not given by the said Oklahoma Gas and Electric Company. It is alleged in terms that the Oklahoma Gas and Electric Company caused the suspension of said Order No.

3388, and that each of the supersedeas bonds referred to said order as having been suspended upon the application of such Oklahoma Gas and Electric Company, and that such suspension was conditioned that the Oklahoma Gas and Electric Company should account to Wilson & Co., for any and all sums collected for gas pending the appeal in excess of the price that would have been paid therefor, if calculated under the terms of said Order No. 3388, appealed from, and that Oklahoma Gas and Electric Company was estopped from relying upon any irregularity or insufficiency of the said bonds, and also estopped from denying that such order had been suspended upon their application and at their instance and request, and that the said Oklahoma Gas and Electric Company had had the benefit of such suspension order, and of the fruits of the appeal, including the collection of a large amount of money from Wilson & Co., for gas sold at an exorbitant price during the appeal of said cause, and the suspension of said Order No. 3388, by reason of which the Oklahoma Gas and Electric Company was estopped, and that the plaintiff was entitled to recover the amounts therein prayed for in full, against the Oklahoma Gas and Electric Company and against the Fidelity & Casualty Company of New York, its surety, to the full extent of the three several bonds referred to. The foregoing are the only substantial and material allegations in the petition.

[fol. 180] The separate answer of Oklahoma Gas and Electric Company denies each and every material allegation in the plaintiff's petition except such as were specifically admitted, and said answer admits the corporate existence of the parties; admits the Fidelity & Casualty Company of New York is a corporation organized and existing under the laws of the State of New York and authorized to execute judicial and other forms of bonds within the State of Oklahoma; admits that Wilson & Co. Inc., filed a petition with the Corporation Commission of the State of Oklahoma in Cause No. 7052; admits that the Corporation Commission made its findings of fact and conclusions of law in favor of Wilson & Co.; admits that it gave notice to the Supreme Court of the State of Oklahoma and applied for supersedeas; it further admits that Wilson & Co. served on Oklahoma Gas and Electric Company its offer to take over and purchase the present service line owned

and operated by the Oklahoma Gas and Electric Company on Ash Avenue leading into or near the boiler room of the said Wilson & Co. Inc. of Oklahoma and to pay therefor its reasonable value. (This notice is attached to plaintiff's petition as Exhibit "F". It stated that the line was about 400' or 500' in length and that its value could be quickly and easily ascertained. This notice further requested that Wilson & Co. be advised that day or the next day as to whether the Oklahoma Gas and Electric Company would sell said line, at its fair market value for cash and that otherwise Wilson & Co. would proceed to lay and install its own service line direct from the supply line of the Oklahoma Gas and Electric Company on Ash Avenue to its boiler room in conformity to the order of the Corporation Commission of Oklahoma.) The answer further admits the execution of each of the three bonds referred to by itself, as principal, and by The Fidelity & Casualty Company, as surety.

The answer further alleged that defendant, Oklahoma Gas and Electric Company, was a domestic corporation [fol. 181] and a public utility engaged in the distribution and sale of gas in the city of Oklahoma City and other cities and towns in the State of Oklahoma; that the Oklahoma Natural Gas Company was also a corporation engaged in the business of the production, transportation and sale of natural gas as a public utility; that on and prior to November 13, 1925, the Oklahoma Gas and Electric Company was the owner of a gas distribution system in the city of Oklahoma City and the vicinity thereof and was engaged in the business of selling natural gas for use as heat and fuel to domestic and industrial consumers, both within and without the city limits of Oklahoma City, which said gas was delivered by the defendant, through its distribution system, to its said consumers at or on the premises of said consumers at rates prescribed by the Corporation Commission of the State of Oklahoma; that the defendant purchased said gas from the Oklahoma Natural Gas Company at city gates or measuring stations outside of the city limits of said Oklahoma City, and paid the Oklahoma Natural Gas Company for said gas the rate fixed by the Corporation Commission of Oklahoma and that said gas so purchased from the Oklahoma Natural Gas Company and transmitted through its lines within the State of Oklahoma to the vicinity of Oklahoma City where it was delivered to the defend-

ant through meters at said city gates or measuring stations; that the manufacturing plant of Wilson & Co. Inc. of Oklahoma at all times hereinafter mentioned was situated in Oklahoma County, without the corporate limits of said city, but immediately adjacent thereto and within the city gates or measuring stations and on the distribution lines of Oklahoma Gas and Electric Company; that on the 13th day of November, 1925, and for a long time prior thereto, Wilson & Co. Inc. purchased gas from Oklahoma Gas and Electric Company at a rate of 68¢ for the first 100,000 cubic feet and 20¢ per thousand cubic feet for all in excess thereof where the consumption amounted to 15,000,000 cubic feet [fol. 182] per month, or more, which was the rate fixed by the Corporation Commission and charged all other consumers or purchasers of gas similarly situated.

The defendant further alleged that the order of the Corporation Commission requiring Oklahoma Natural Gas Company to furnish gas directly to Wilson & Co. was legislative and the order and decision of the Supreme Court of Oklahoma affirming said order of the Corporation Commission was likewise legislative and therefore under the Constitution and laws of the United States this defendant has the right to have the decision of this court upon both the law and the facts affecting the validity of said order; that said order was null and void in that it required the Oklahoma Natural Gas Company, against its will and over its objection, to supply gas as a fuel directly to Wilson & Co. Inc., when said Oklahoma Natural Gas Company had never professed to furnish gas to it or to any other industrial consumer within the city gates or measuring stations either within or without the city limits of Oklahoma City, Oklahoma, and had not at the time of making said order or at any time prior thereto undertaken or professed to serve Wilson & Co. Inc., with gas or to serve any other consumer similarly situated, and said order constituted an appropriation of private property for public use without just compensation and deprived the Oklahoma Natural Gas Company of its property without due process of law, contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States and of Section 7, Article 2 of the Constitution of the State of Oklahoma.

That said order was also null and void as to the defendant, Oklahoma Gas and Electric Company, for the reason

that the same purported, under heavy fines and penalties which might be visited upon said Oklahoma Natural Gas Company, to require said Oklahoma Natural Gas Company to furnish such gas to said Wilson & Co. Inc., in the place and stead of the same being furnished by defendant, Oklahoma Gas and Electric Company; that the furnishing of such gas by Oklahoma Gas and Electric Company to said Wilson & Co. Inc., was profitable and remunerative to said Oklahoma Gas and Electric Company, and if said order [fol. 183] of the Corporation Commission had been carried out from the time of the making thereof, the said Oklahoma Gas and Electric Company would have been deprived of continuing to furnish such gas to Wilson & Co. Inc., subsequent to the making of said order and said Oklahoma Gas and Electric Company would thereby, by reason of said void and invalid order, have been deprived of its property, property rights and remunerative business without due process of law, and in violation of the Fourteenth Amendment to the Constitution of the United States, and of Section 7, Article 2 of the Constitution of the State of Oklahoma.

The answer further alleged that prior to and at the time of the making of said order by the Corporation Commission of Oklahoma there was an oral contract existing between the defendant and the Oklahoma Natural Gas Company, made four or five years prior thereto and extending so long as the defendant should operate its distribution system and purchase gas from the Oklahoma Natural Gas Company, providing that as to consumers of gas within the city gates or measuring stations so situated as Wilson & Co. Inc., with reference to Oklahoma City, said city gates and the respective property of this defendant and Oklahoma Natural Gas Company, that such consumers would be supplied and furnished gas by Oklahoma Gas and Electric Company and would not be furnished and supplied gas by the Oklahoma Natural Gas Company, and that therefore said order of the Corporation Commission was further illegal, invalid and void as impairing, or attempting to impair, the rights and obligations of and under said contract between Oklahoma Gas and Electric Company and Oklahoma Natural Gas Company, and the contract and contractual relations existing between the said corporation and said Wilson & Co. Inc., whereby gas was being sold

and furnished to said Wilson & Co. Inc., by the Oklahoma Gas and Electric Company, all contrary to and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and of Section 10, Article 1 of the Constitution of the United States, and of Section 7, Article 2 of the Constitution of the State of Oklahoma. [fol. 184] The answer further alleges that plaintiff is not entitled to recover, because Oklahoma Natural Gas Company never made or filed the $1,000.00 bond required of them by the Corporation Commission.

For its separate answer, the Fidelity & Casualty Company of New York adopts the answer of the defendant, Oklahoma Gas and Electric Company, above.

For reply, after a general denial, plaintiff, Wilson & Co., alleges that under the gate-rate order No. 1886, separate spheres of service to be furnished by the two gas companies were marked out and defined; that Oklahoma Natural Gas Company was authorized to furnish and deliver supplies of gas to be measured to the Oklahoma Gas and Electric Company at the city limits, the last named company was to pay for such gas at that point and was to have exclusive right to distribute the same within the municipality; that Wilson & Co., has always been far beyond and outside the city limits of Oklahoma City; that its boiler-room lies only about three hundred feet north of Ash Avenue, along the north side of which there runs the high-powered six-inch gas supply line owned by the Oklahoma Natural Gas Company, and that if in fact that the two gas companies at the time of the adoption of Order No. 1886, entered into an agreement among themselves, attempting to parcel out for service patrons living beyond the city limits whereby plaintiff's assignor in Oklahoma City, so situated, was to be served by the Oklahoma Gas and Electric Company, then such an agreement was void and against public policy, and that if such contract contemplated the service of the Oklahoma company by the Oklahoma Natural Gas Company, then the latter company ought to have taken over and served said Wilson & Co., at the lawful rates then applicable. Plaintiff avers however that such an arrangement was a mere pretense, and for the sole purpose only of allowing the largest and most favored patron of the Oklahoma Natural Gas Company, to-wit: the Oklahoma Gas and Electric Company, with the

outlay of only a few hundred dollars, to exact from the [fol. 185] Oklahoma company approximately Forty Thousand Dollars a year, in excess of the legal rate for gas, and in excess of the price which other patrons similarly situated were furnished gas in like quantities by the Oklahoma Natural Gas Company, and that this agreement was illegal, discriminatory, unconscionable, and against public policy. Plaintiff alleged that it did not take over the short service line, or parallel the same, but it made an effort to do so, only to discover that Oklahoma Gas and Electric Company had suspended and superseded and appealed Order No. 3388 to the Supreme Court of the State of Oklahoma.

The plaintiff then introduced Exhibit "5", being the findings of fact and conclusions of law of the District Court of Oklahoma County in said cause No. 71,898, which are as follows (Caption omitted):

PLAINTIFF'S EXHIBIT 5

"Findings of Fact

I

At all the times mentioned in plaintiff's petition, the Oklahoma Natural Gas Company was a corporation engaged in the business of the production of, transportation and sale of natural gas as a public utility, supplying gas at various towns and cities in Oklahoma for domestic and industrial consumption. It held franchises for local distribution in a few towns and cities, but none in Oklahoma City.

Wilson & Company, Inc., is a corporation operating a manufacturing plant situated in Oklahoma County southwest of and outside the corporate limits of the city of Oklahoma City. The Oklahoma Gas & Electric Company is a corporation, at all the times herein involved, engaged in the distribution of gas in Oklahoma City to domestic and industrial consumers in Oklahoma City and immediate vicinity, and operating under a franchise from the City. Prior to the promulgation by the Corporation Commission of what is known as the gate rate order in June, 1921, the Oklahoma Natural Gas Company was supplying the Okla-

homa Gas & Electric Company with natural gas at Oklahoma City under contracts and arrangements on the percentage basis, which really created the relation of seller as to the Oklahoma Natural Gas Company and purchaser as to the Oklahoma Gas & Electric Company, such percentage arrangement being merely the method or basis of fixing the sale price for such gas by the Oklahoma Natural Gas Company.

II

That at the time of making said gate rate order, and for some time prior thereto, there were only two reducing stations at, or through which the gas was reduced from high pressure to low pressure and delivered by said Oklahoma Natural Gas Company to the Oklahoma Gas & Electric Company, one of such stations being located at Thirty-sixth street and Santa Fe Avenue, and the other being located at Pennsylvania and Reno Avenues, both of which stations were then outside of the city limits of Oklahoma City, both of same being northerly or north of the city. All of the gas passing through the reducing station at Thirty-sixth Street and Santa Fe Avenue was gas from the north of Oklahoma City produced in the fields known as the Cushing, Kellyville, Depew and other fields in that general locality, which points are north and east of Oklahoma City, [fol. 186] and was transmitted by the pipe lines of the Oklahoma Natural Gas Company. During the year 1919, the Oklahoma Natural Gas Company built a transmission line to the gas field known as the Chickasha field near Chickasha, Oklahoma, southwest of Oklahoma City, and said line extended from said Chickasha field to Independence Avenue in Oklahoma City and thence proceeded north on said Independence Avenue nearly a mile west of the packing plant of Wilson & Company, extending on to Reno Avenue, thence east on that Avenue to the reducing station at Pennsylvania and Reno, said Reno Avenue being something over a mile north of said packing plant. The Oklahoma Natural Gas Company in 1921, constructed a six-inch gas line connected with its system and extending east and west through Ash Street west of Oklahoma City, and located about five or six hundred feet south of the engine-room of Wilson & Company, Inc.; said gas line in Ash Street extended 1,500 feet east of Wilson & Company, Inc.'s plant, and connected with a meter or measuring station located at or immedi-

ately adjacent to the intersection of Hickory Street and Agnew street, and within two hundred feet of the city limits of the city of Oklahoma City; this gas line was constructed for use in such emergency as might arise by the washing out at the river crossings of its line on Independence Avenue; the said measuring station located at or near the intersection of Hickory Street and Agnew Street, remained in this location throughout the month of September, 1924, and for some time thereafter; in September, 1924, Agnew Street was, and still is, the city limits of Oklahoma City; the plant of Wilson & Company, Inc., of Oklahoma, was, in September, 1924, and now is, located immediately west of the intersection of Agnew and Hickory Street and approximately 1,500 feet outside the city limits of Oklahoma City.

The defendant, Oklahoma Gas & Electric Company, desired to serve gas to Wilson & Company, Inc., for fuel purposes and made an arrangement or agreement with the Oklahoma Natural Gas Company, in 1924, at some date following the month of September, to move its measuring station or meter from its location at or near the intersection of Agnew and Hickory Streets, to some point west of the plant of Wilson & Company, Inc. of Oklahoma, and the said measuring station was finally located at or near the intersection of Ash and May Avenues, approximately one-third of a mile west of Wilson & Company, Inc.'s plant, and approximately 3,000 feet west of Agnew Street, the city limits of Oklahoma City. It was at first understood between the Oklahoma Natural Gas Company and the Oklahoma Gas & Electric Company that the measuring station should be located just south of the Wilson & Company, Inc. plant at the point where Wilson & Company, Inc. were to be served and the Oklahoma Gas & Electric Company on April 3rd, 1925, purchased that part of the Oklahoma Natural Gas Company's line between such point and the measuring station at Hickory Street, but has not purchased that part of the line extending west to the measuring station on May Avenue. The Oklahoma Gas & Electric Company constructed a service line extending from the main on Ash Avenue, to the boiler-room of Wilson & Company, Inc., and the necessary meters and measuring devices.

III

Prior to the making of the gate rate order in 1921, the Oklahoma Gas & Electric Company had been supplying gas to users at Oklahoma City, both within and without the city limits. When the gate rate order was made and the Oklahoma Natural Gas Company was required to put in gates and measure, sell and deliver the gas to the Oklahoma Gas & Electric Company at said gates, there were several consumers of gas outside of and beyond the location of the gate stations, who had been supplied by the Oklahoma Gas & Electric Company, and in carrying out said order, it was agreed between the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company, with the assent of the Corporation Commission that the Oklahoma Natural Gas Company could, if it desired, con- [fol. 187] tinue to supply gas to such consumers outside the gate, and all or some of them were continued to be so supplied after said gate order by the Oklahoma Natural Gas Company. During 1924-1925-1926, the Oklahoma Natural Gas Company served gas to Lorris E. Cobb, R. S. Schuneman and Billie Gregg, outside of the city limits and outside the measuring stations. However, each of them consumed less than one hundred thousand cubic feet per month. No other consumers, except Billie Gregg, were furnished gas by the Oklahoma Natural Gas Company outside the said gates, except consumers over whose land its pipe line was laid. The Oklahoma Natural Gas Company never served consumers inside of the gates whose gas had been measured and charged to the distributing company. The Oklahoma Natural Gas Company never offered to serve industrial users in the immediate vicinity of Oklahoma City. It had no desire to furnish any gas in competition with its biggest customer, the Oklahoma Gas & Electric Company who was purchasing all its gas from the Oklahoma Natural Gas Company. Whether there was an agreement to that effect between the Companies, does not appear.

IV

In September, 1924, the Oklahoma Natural Gas Company made its application to the Corporation Commission of the State of Oklahoma, to establish a reduction in rates for gas for industrial purposes; the Corporation Commission acted upon its application and by Journal Entry No.

1203, in Cause No. 1630, authorized the Oklahoma Natural Gas Company to establish rates for industrial gas of thirty-eight cents per thousand cubic feet, for the first 100,000 cubic feet, per month, and fifteen cents per thousand cubic feet, for all gas in excess of the first 100,000 cubic feet, per month, provided there was a minimum consumption of 15,000,000 cubic feet per month, per customer; said rates were to apply to consumers located outside of the city limits of the cities served by the Oklahoma Natural Gas Company; the Corporation Commission did, by its Journal Entry No. 3276, in Cause No. 5965, authorize the Oklahoma Natural Gas Company to reduce its rates to thirty-five cents per thousand cubic feet for the first 100,000 cubic feet, per month, and fifteen cents per thousand cubic feet, for all in excess of the first 100,000 cubic feet, per month, where the consumer used a minimum of 15,000,000 cubic feet, per month; said rate became effective on January 1, 1926; it is admitted by the defendants that the Oklahoma Natural Gas Company did, from and after January 1, 1926, furnish gas to Producers & Refiners Corporation, located outside of Tulsa, Oklahoma, at the rate of thirty-five cents per thousand cubic feet, for the first 100,000 cubic feet, per month, and fifteen cents per thousand cubic feet for all over 100,000 cubic feet; that the consumption of the Producers & Refiners Corporation during the months of January, to and including the month of September, 1926, was from 45,898,000 cubic feet, to 65,287,000 cubic feet. Also the Oklahoma Natural Gas Company furnished industrial gas to several other industrial users at Sapulpa and Tulsa.

It was never the purpose of the Oklahoma Natural Gas Company to furnish natural gas in competition with its customers in the immediate vicinity of any city where it sold its gas to a distributing company but it did propose to sell industrial gas at the rates provided in the order of the Corporation Commission at all other points on its lines in Oklahoma outside of cities and towns.

In December, 1924, the Oklahoma Gas & Electric Company began serving gas to Wilson & Company and built a service line from the six-inch line in Ash Street to Wilson & Company's boilers. April —, 1926, upon complaint of Wilson & Company, the Corporation Commission promulgated its Order No. 3388, which Order required the Oklahoma Natural Gas Company to serve Wilson & Com-

pany with gas at its industrial rate. Both the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company appealed to the Supreme Court and the Oklahoma Gas & Electric Company gave Bond to supersede the execution of the Order and Supersedeas was ordered upon filing and approving Bonds.

May 26, 1926, the Oklahoma Gas & Electric Company, [fol. 188] as principal and The Fidelity & Casualty Company of New York, as surety, executed Bond to Wilson & Company in the sum of $25,000.00.

December 27, 1926, the Oklahoma Gas & Electric Company, as principal, and The Fidelity and Casualty Company of New York, as surety, gave an additional Bond in the sum of $15,000.00 and July 6, 1927, a further Bond in the sum of $10,000.00.

The Supreme Court on April 29, 1930, affirmed the Order of the Corporation Commission, (reported in 146 Okl. 272).

Between the date of the supersedeas order and the commencement of suit, Wilson & Company paid for gas to the Oklahoma Gas & Electric Company in excess of the amount computed at the ordered rate as is set forth in the following table, which with the computations of interest thereon have been by the parties stipulated to be correct:

Interest Computed at 6%, on Over-Payments as Shown on Exhibit "K" Attached to the Petition, from the Date of the Several Payments to February 17, 1933

Amount overpaid	Date of payment	Interest Yr.	Mo.	Days	Amount of interest
$522.95	May 14, 1926	6	9	3	$212.06
3,306.30	June 10, 1926	6	8	7	1,326.38
3,530.95	July 8, 1926	6	7	9	1,400.00
3,380.55	Aug. 12, 1926	6	6	5	1,321.23
3,363.55	Sept. 13, 1926	6	5	4	1,297.21
3,524.15	Oct. 12, 1926	6	4	5	1,342.11
3,845.25	Nov. 12, 1926	6	3	5	1,445.17
3,601.65	Dec. 14, 1926	6	2	3	1,334.41
3,691.80	Jan. 10, 1927	6	1	7	1,351.81
3,649.05	Feb. 14, 1927	6	0	3	1,315.48
3,515.45	Mar. 10, 1927	5	11	7	1,252.08
3,845.85	Apr. 9, 1927	5	10	8	1,351.17
3,368.70	May 9, 1927	5	9	8	1,166.69
3,580.25	June 11, 1927	5	8	6	1,220.87
3,748.50	July 14, 1927	5	7	3	1,257.62
3,972.75	Aug. 13, 1927	5	6	4	1,313.65
4,253.60	Sept. 12, 1927	5	5	5	1,385.96
3,994.15	Oct. 14, 1927	5	4	3	1,280.13
4,256.10	Nov. 11, 1927	5	3	6	1,334.93
3,772.30	Dec. 13, 1927	5	2	4	1,171.93
3,631.85	Jan. 13, 1928	5	1	4	1,110.14
3,192.85	Feb. 10, 1928	5	0	7	961.58
3,053.25	Mar. 14, 1928	4	11	3	902.23
					$28,064.86

Interest will be added for each day after February 17, 1933, at the rate of $13.4369.

Interest computed at six per cent on $50,000.00, from April 29, 1930, to February 17, 1933, is $8,400.00. Interest will be added for each day after February 17, 1933, at the rate of $6.33⅓ per day.

Conclusions of Law

I

The Order of the Corporation Commission No. 3388 is a legislative order, and the Supreme Court of Oklahoma in affirming said Order acted legislatively and gave only legislative effect thereto.

II

That under the Constitution of the United States and under the Constitution and laws of Oklahoma, this Court has jurisdiction and it is its duty to judicially determine the validity of said Order No. 3388 in this action, since the defendants have pleaded the invalidity thereto as a defense to the plaintiff's claims.

III

The findings of the Corporation Commission are to be regarded as presumably correct until clearly overcome.

[fol. 189]

IV

The Oklahoma Natural Gas Company as a public utility was obligated to transport and serve Natural gas to all persons similarly situated, upon the same terms and conditions.

V

The Oklahoma Natural Gas Company having undertaken to serve gas to industrial consumers on its main line outside of the limits of cities and towns and having actually served such consumers at other points than at Oklahoma City, was obligated to serve gas to Wilson & Company at its published industrial rate.

VI

Order No. 3388 of the Corporation Commission is a valid order.

VII

The defendant, Oklahoma Gas & Electric Company and The Fidelity and Casualty Company of New York, are estopped by the recitals in the Bonds executed by them and by their acceptance of the benefits of the supersedeas order from denying that the Order of the Corporation Commission, No. 3388, was suspended and superseded.

VIII

(1). That the plaintiff is entitled to recover against both of the defendants on the first count of the petition $25,000.00, with interest thereon at six per cent, per annum, from April 29, 1930, the date that the Supreme Court affirmed the Order of the Corporation Commission, to the date of the entering of the judgment.

(2). That the plaintiff is entitled to recover against both of the defendants on the second count of the petition $15,000.00, with interest thereon at six per cent, per annum, from April 29, 1930, the date that the Supreme Court affirmed the Order of the Corporation Commission, to the date of the entering of the judgment.

(3). That the plaintiff is entitled to recover against both of the defendants on the third count of the petition $10,000.00 with interest thereon at six per cent, per annum, from April 29, 1930, the date that the Supreme Court affirmed the Order of the Corporation Commission, to the date of the entering of the judgment.

(4). That the plaintiff is entitled to recover from the defendant, the Oklahoma Gas & Electric Company, on the fourth count of the petition $8,621.80, with interest at six per cent, per annum, from the date of the several payments, as shown by Exhibit "K" attached to the petition, to the date of the entering of the judgment, less the amount of the judgments entered against both defendants under the first, second and third counts of the petition.

(Signed) Lucius Babcock, District Judge."

It was agreed between the parties in open court that the defendants in cause No. 71,898 in the District Court of

Oklahoma County had filed motions for new trial, which were then pending and undisposed of and the Court thereupon granted complainants permission to, and they thereafter did, and before the decision in this case, file documentary and other evidence showing that an appeal had been taken in said case No. 71,898 to the Supreme Court of the State of Oklahoma.

[File endorsement omitted.]

[fol. 190] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

ORDER ENLARGING TIME FOR DOCKETING THE CASE AND FILING THE RECORD THEREOF WITH THE CLERK OF THE SUPREME COURT OF THE UNITED STATES AND ALLOWING COMPLAINANTS TO FILE STATEMENT OF THE JURISDICTION OF THE SUPREME COURT—Filed Feb. 8, 1934

It appearing to the undersigned Judge of the United States District Court for the Western District of Oklahoma that by inadvertence complainants have failed to file a separate typewritten statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment and decree heretofore entered in this cause and that the time heretofore fixed by this court for the Clerk of this Court to prepare and certify the transcript of the record, proceedings and decree in this cause and transmit the same to the Supreme Court of the United States will expire on the 15th day of February, 1934. The court finds that complainants should be per-
[fol. 194] mitted to forthwith file said statement of the jurisdiction of the Supreme Court of the United States and defendants should be allowed fifteen days after service of said statement upon them to file with the Clerk of this Court a typewritten statement disclosing any matter or ground making against the jurisdiction of the Supreme Court of the United States in order that such statement of jurisdiction and counter-statement, if any, may be included

by the Clerk of this Court in the transcript of the record to be by him transmitted to the Supreme Court of the United States, all as provided for by the rules of said Supreme Court, and that the time for preparing, certifying and transmitting the transcript of the record herein to the Supreme Court of the United States should be enlarged as hereinafter provided.

Now, therefore, for good cause shown, it is ordered that complainants be and they are hereby authorized and permitted to forthwith file with the Clerk of this Court a separate typewritten statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment and decree heretofore entered in this cause and to serve such statement upon defendants and defendants be, and they are hereby allowed fifteen days from the date of such service within which they may file with the Clerk of this Court and serve the same upon the complainants a typewritten statement disclosing any matter or ground making against the jurisdiction of the Supreme Court of the United States asserted by the complainants and the Clerk of this Court shall include each and all of such statements and the service thereof in the transcript of the record to be by him transmitted to the Supreme Court of the United States, all as provided for by the rules of said Court.

For good cause shown it is further ordered that the time heretofore fixed by order of this court for the Clerk of this [fols. 192–197] Court to prepare and certify the transcript of the record, proceedings, and decree in this cause and transmit the same to the Supreme Court of the United States is enlarged so that he shall have the same within the said Supreme Court of the United States on or before the 10th day of March, 1934.

Done at Oklahoma City, Oklahoma, this 8 day of February, 1934.

Edgar S. Vaught, United States District Judge for the Western District of Oklahoma.

[File endorsement omitted.]

[fol. 198] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

PETITION FOR APPEAL AND PRAYER FOR REVERSAL—Filed Dec. 14, 1933

The Oklahoma Gas & Electric Company, Oklahoma Natural Gas Company, W. T. Phillips, Jr., H. J. Crawford, J. V. Ritts, Leonard C. Ritts, R. W. Hannan, A. W. Leonard and R. C. Sharp, the Directors of the Oklahoma Natural Gas Company, a dissolved corporation, and Oklahoma Natural Gas Corporation, and each of them, feeling themselves aggrieved by the decision and decree of the District Court of the United States for the Western District of Oklahoma (composed of three Judges, convened pursuant to the provisions of paragraph 380, of Title 28, Judicial Code), the complainants therein, Oklahoma Gas & Electric Company, Oklahoma Natural Gas Company, W. T. Phillips, Jr., H. J. Crawford, J. V. Ritts, Leonard C. Ritts, R. W. Hannan, A. W. Leonard and R. C. Sharp, the Directors of the Okla-[fol. 199] homa Natural Gas Company, a dissolved corporation, and Oklahoma Natural Gas Corporation, and each of them, hereby pray that an appeal be allowed to the Supreme Court of the United States herein, for the reasons set forth in the assignments of error filed herewith, and for an order fixing the amount of the bond thereon, and that citation be issued, as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States sitting in the City of Washington in the District of Columbia, as under the rules in such case made and provided, and for which errors complainants, and each of them, pray that the said decision and decree of the District Court of the United States for the Western District of Oklahoma in the above entitled cause be reversed, and a judgment rendered in favor of said complainants, and each of them, and for costs.

Rainey, Flynn, Green & Anderson, Allen, Underwood & Canterbury, Counsel for Complainants.

[File endorsement omitted.]

[fol. 200] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Dec. 14, 1933

The complainant Oklahoma Gas and Electric Company further and otherwise separately and severally from the other complainants herein assign the following errors in the record and proceedings in said cause:

First: That the District Court of the United States for the Western District of Oklahoma erred in dismissing the bill of complaint as to this complainant.

Second: That the Court erred in holding that the Oklahoma Gas and Electric Company had an adequate remedy at law by assailing the validity of the order of the Corporation Commission complained of, by urging such invalidity of said order as a defense in the suit instituted by Wilson & Co. Inc., in the District Court of Oklahoma County, Oklahoma, against this complainant and its surety for the collection of the refund or overcharge based on the order of the Corporation Commission.

[fol. 201] Third: That the Court erred in denying a permanent injunction to this complainant enjoining Wilson & Co. Inc., from proceeding in said action in the District Court of Oklahoma County for the collection of said refund or overcharge during the pendency of this equitable proceeding assailing the order of the Corporation Commission.

Fourth: That the Court erred in holding that this complainant is not entitled to an injunction herein.

Fifth: That the Court erred in denying an injunction herein in favor of this complainant and against the defendants, as the evidence shows that the order of the Corporation Commission is invalid and contrary to the rights of this complainant under the Constitution of the United States and particularly the Fourteenth Amendment thereof.

Sixth: That the Court erred in its conclusion of law number I, as the laws of the State of Oklahoma prescribe the penalties and subjects any one violating such order to such penalties, and such penalties cannot be waived by any offi-

cials of the State of Oklahoma; and for the further reason that the action of Oklahoma Packing Company, formerly Wilson & Co. Inc., in the District Court of Oklahoma County to collect refund and overcharge based on such order of the Commission is an enforcement thereof; and for the further reason that both under the decisions of the Supreme Court of the United States and of the Supreme Court of the State of Oklahoma an equity suit for injunction to test the validity of such order is authorized and permitted, and the settled practice in such injunction suits is to make the officials of the State charged with the duty of enforcing said order parties thereto.

Seventh: The Court erred in its conclusion of law number II, in holding that the only liability to which the complainants, or either of them, may be subjected on account of such order of the Commission is the repayment to a [fol. 202] single consumer, to-wit, Wilson & Co. Inc., of the refund or overcharge, and that such possible liability attaches only to the Oklahoma Gas and Electric Company, as the laws of the State of Oklahoma prescribe the penalties and subjects any one violating such order to such penalties and such penalties cannot be waived by any officials of the State of Oklahoma; and for the further reason that both under the decisions of the Supreme Court of the United States and of the Supreme Court of the State of Oklahoma an equity suit for injunction to test the validity of such order is authorized and permitted, and the settled practice in such injunction suits is to make the officials of the State charged with the duty of enforcing said order parties thereto.

Eighth: The Court erred in its conclusion of law number III, holding that the validity of the order of the Commission may be interposed as a defense to the action at law brought by Wilson & Co. Inc., in the District Court of Oklahoma County to recover the refund or overcharge, and that therefore an adequate remedy at law exists. Such conclusion is erroneous for the reason that the adequate remedy at law, which defeats the Federal equity jurisdiction, is a remedy at law in the Federal courts and not a remedy at law in the State courts. Such conclusion is further erroneous, for the reason that the only judicial remedy provided by the laws of Oklahoma is an equity proceeding to test

the validity of the order, and no remedy at law of any character is given or provided by the laws of Oklahoma.

Ninth: The Court erred in dissolving the temporary restraining order and denying the temporary injunction to this complainant.

Rainey, Flynn, Green & Anderson; Allen, Underwood & Canterbury, Attorneys for Complainant.

[File endorsement omitted.]

[fol. 203] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Dec. 14, 1933

The complainants, Oklahoma Gas and Electric Company, a corporation, Oklahoma Natural Gas Company, a corporation, W. T. Phillips, Jr., H. J. Crawford, J. V. Ritts, Leonard C. Ritts, R. W. Hannan, A. W. Leonard and R. C. Sharp, the Directors of the Oklahoma Natural Gas Company, a dissolved corporation, and Oklahoma Natural Gas Corporation, all jointly aver, and each of them separately and severally avers, that there is error in the judgment and proceedings in this cause, and assign the following errors in the record and proceedings herein:

First: That the District Court of the United States for the Western District of Oklahoma erred in dismissing the bill of complaint of complainants.

Second: That the Court erred in holding that the Oklahoma Gas and Electric Company had an adequate remedy [fol. 204] at law by assailing the validity of the order of the Corporation Commission complained of, by urging such invalidity of said order as a defense in the suit instituted by Wilson & Co. Inc., in the District Court of Oklahoma County, Oklahoma, against the Oklahoma Gas and Electric Company and its surety for the collection of the refund or overcharge based on the order of the Corporation Commission.

Third: That the Court erred in denying a permanent injunction to the complainants, enjoining Wilson & Co. Inc., from proceeding in said action in the District Court of Oklahoma County for the collection of said refund or overcharge during the pendency of this equitable proceeding assailing the order of the Corporation Commission.

Fourth: That the Court erred in holding that the complainants, other than said Oklahoma Gas and Electric Company, are not entitled to an injunction herein.

Fifth: That the Court erred in denying an injunction herein in favor of the complainants and against the defendants, as the evidence shows that the order of the Corporation Commission is invalid and contrary to the rights of complainants under the Constitution of the United States and particularly the Fourteenth Amendment thereof.

Sixth. That the Court erred in holding that the complainants other than the Oklahoma Gas and Electric Company had no such interest as entitled them to an injunction herein.

Seventh: That the Court erred in its conclusion of law number I, as the laws of the State of Oklahoma prescribe the penalties and subjects any one violating such order to such penalties, and *subjects any one violating such order to such penalties*, and such penalties cannot be waived by any officials of the State of Oklahoma; and for the further reason that the action of Oklahoma Packing Company, formerly Wilson & Co. Inc., in the District Court of Oklahoma [fol. 205] County to collect refund and overcharge based on such order of the Commission is an enforcement thereof; and for the further reason that both under the decisions of the Supreme Court of the United States and of the Supreme Court of the State of Oklahoma an equity suit for injunction to test the validity of such order is authorized and permitted, and the settled practice in such injunction suits is to make the officials of the State charged with the duty of enforcing said order parties thereto.

Eighth: The Court erred in its conclusion of law number II, in holding that the only liability to which the complainants, or either of them, may be subjected on account of such order of the Commission is the repayment to a

single consumer, to-wit, Wilson & Co. Inc., of the refund or overcharge, and that such possible liability attaches only to the Oklahoma Gas and Electric Company, as the laws of the State of Oklahoma prescribe the penalties and subjects any one violating such order to such penalties and such penalties cannot be waived by any officials of the State of Oklahoma; and for the further reason that both under the decisions of the Supreme Court of the United States and of the Supreme Court of the State of Oklahoma an equity suit for injunction to test the validity of such order is authorized and permitted, and the settled practice in such injunction suits is to make the officials of the State charged with the duty of enforcing said order parties thereto.

Ninth: The Court erred in its conclusion of law number III, holding that the validity of the order of the Commission may be interposed as a defense to the action at law brought by Wilson & Co. Inc., in the District Court of Oklahoma County to recover the refund or overcharge, and that therefore an adequate remedy at law exists. Such conclusion is erroneous for the reason that the adequate remedy at law, which defeats the Federal equity jurisdiction, is a remedy at law in the Federal courts and not a remedy at [fol. 206] at law in the State courts. Such conclusion is further erroneous, for the reason that the only judicial remedy provided by the laws of Oklahoma is an equity proceeding to test the validity of the order, and no remedy at law of any character is given or provided by the laws of Oklahoma.

Tenth: The Court erred in dissolving the temporary restraining order and denying the temporary injunction to these complainants.

Rainey, Flynn, Green & Anderson; Allen, Underwood & Canterbury, Attorneys for Complainants.

[File endorsement omitted.]

[fol. 207] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Dec. 14, 1933

The complainants, Oklahoma Natural Gas Company, a corporation, W. T. Phillips, Jr., H. J. Crawford, J. V. Ritts, Leonard C. Ritts, R. W. Hannan, A. W. Leonard and R. C. Sharp, the Directors of the Oklahoma Natural Gas Company, a dissolved corporation, and Oklahoma Natural Gas Corporation, all jointly aver, and each of them separately and severally avers, that there is error in the judgment and proceedings in this cause, and assign the following errors in the record and proceedings herein:

First: That the District Court of the United States for the Western District of Oklahoma erred in dismissing the bill of complaint as to these complainants.

Second: That the Court erred in denying an injunction herein restraining and enjoining any enforcement of the [fol. 208] order of the Corporation Commission during the pendency of this equitable proceeding assailing the order of the Corporation Commission.

Third: That the Court erred in holding that these complainants are not entitled to an injunction herein.

Fourth: That the Court erred in denying an injunction herein in favor of these complainants and against the defendants, as the evidence shows that the order of the Corporation Commission is invalid and contrary to the rights of complainants under the Constitution of the United States and particularly the Fourteenth Amendment thereof.

Fifth: That the Court erred in holding that these complainants had no such interest as entitled them to an injunction herein.

Sixth: That the Court erred in its conclusion of law number I, as the laws of the State of Oklahoma prescribe the penalties and subjects any one violating such order to such penalties, and such penalties cannot be waived by any officials of the State of Oklahoma; and for the further reason that the action of Oklahoma Packing Company, formerly

Wilson & Co. Inc., in the District Court of Oklahoma County to collect refund and overcharge based on such order of the Commission is an enforcement thereof; and for the further reason that both under the decisions of the Supreme Court of the United States and of the Supreme Court of the State of Oklahoma an equity suit for injunction to test the validity of such order is authorized and permitted, and the settled practice in such injunction suits is to make the officials of the State charged with the duty of enforcing said order parties thereto.

Seventh: The Court erred in its conclusion of law number II, in holding that the only liability to which the complainants, or either of them, may be subjected on account of such order of the Commission is the repayment to a [fol. 209] single consumer, to-wit, Wilson & Co. Inc., of the refund or overcharge, and that such possible liability attaches only to the Oklahoma Gas and Electric Company, as the laws of the State of Oklahoma prescribe the penalties and subjects any one violating such order to such penalties and such penalties cannot be waived by any officials of the State of Oklahoma; and for the further reason that both under the decisions of the Supreme Court of the United States and of the Supreme Court of the State of Oklahoma an equity suit for injunction to test the validity of such order is authorized and permitted, and the settled practice in such injunction suits is to make the officials of the State charged with the duty of enforcing said order parties thereto.

Eighth: The Court erred in its conclusion of law number III, holding that the validity of the order of the Commission may be interposed as a defense to the action at law brought by Wilson & Co. Inc., in the District Court of Oklahoma County to recover the refund or overcharge, and that therefore an adequate remedy at law exists. Such conclusion is erroneous for the reason that the adequate remedy at law, which defeats the Federal equity jurisdiction, is a remedy at law in the Federal courts and not a remedy at law in the State courts. Such conclusion is further erroneous, for the reason that the only judicial remedy provided by the laws of Oklahoma is an equity proceeding to test the validity of the order, and no remedy at law of any character is given or provided by the laws

of Oklahoma; and said conclusion is further erroneous as to these complainants, for the reason that they are not parties to the suit in the District Court of Oklahoma County and no remedy at law in any court has been accorded to them.

Ninth: The Court erred in dissolving the temporary restraining order and denying the temporary injunction to [fol. 210] these complainants.

Rainey, Flynn, Green & Anderson; Allen, Underwood & Canterbury, Attorneys for Complainants.

[File endorsement omitted.]

[fol. 211] In United States District Court for the Western District of Oklahoma

No. 1357. Equity

Oklahoma Gas & Electric Company, a Corporation; Oklahoma Natural Gas Company, a Corporation; W. T. Phillips, Jr., H. J. Crawford, J. V. Ritts, Leonard C. Ritts, R. W. Hannan, A. W. Leonard and R. C. Sharp, the Directors of the Oklahoma Natural Gas Company, a Dissolved Corporation, and Oklahoma Natural Gas Corporation, Complainants,

vs.

Oklahoma Packing Company, Formerly Wilson & Co., Inc., of Oklahoma, an Oklahoma Corporation; Wilson & Co., Inc., of Oklahoma, a Delaware Corporation; The Corporation Commission of the State of Oklahoma, Paul Walker, Chairman, C. C. Childers and E. R. Hughes, Members of said Commission, and J. Berry King, Attorney General of the State of Oklahoma, Defendants.

Order Allowing Appeal—Filed Dec. 14, 1933

The complainants in the above entitled cause, and each of them, having prayed for the allowance on an appeal in this action to the Supreme Court of the United States from the decision and decree made and entered in the above entitled suit by the District Court of the United States for the

Western District of Oklahoma on the 12th day of December, 1933, and from each and every part thereof, and having presented and filed their petition for appeal, assignments of error and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is now here ordered that an appeal be, and the same is, allowed complainants, and each of them, to the Supreme Court of the United States from the District Court of the [fol. 212] United States for the Western District of Oklahoma in this cause, as provided by law, and it is further ordered that the Clerk of this Court shall prepare and certify a transcript of the record, proceedings, and decree in this cause, and transmit the same to the Supreme Court of the United States, so that he shall have the same within said court within thirty days from this day.

And it is further ordered that security for costs on appeal be fixed in the sum of $1,000.00.

Done at Oklahoma City, Oklahoma, this 14 day of December, 1933.

Edgar S. Vaught, United States District Judge for the Western District of Oklahoma.

[File endorsement omitted.]

[fols. 213-219] Bond on Appeal for $1,000.00, approved and filed Dec. 14, 1933, omitted in printing.

[fol. 220] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF POINTS INTENDED TO BE RELIED UPON AND OF PARTS OF RECORD TO BE PRINTED—Filed March 8, 1934

Pursuant to Paragraph 9 of Rule 13 of this Honorable Court, appellants, and each of them, hereby specify the following as points upon which they will rely for a reversal of the judgment of the United States District Court for the Western District of Oklahoma.

I

The said United States District Court for the Western District of Oklahoma committed error in dismissing the bill of complaint of complainants.

II

That said court erred in holding that the Oklahoma Gas and Electric Company had an adequate remedy at law by pleading the invalidity of the order of the Corporation Commission of Oklahoma as a defense in the suit instituted by Wilson & Co. Inc., in the District Court of Oklahoma County, Oklahoma, against the Oklahoma Gas and Electric Company and its surety for the collection of the refund or [fol. 221] overcharge based on the order of the Corporation Commission.

III

That said court erred in holding that the complainants Oklahoma Natural Gas Corporation and the Trustees of the Oklahoma Natural Gas Company, a dissolved corporation, did not have such interest in the controversy as would entitle them to an injunction herein.

IV

That said court erred in holding that the complainants, and each of them, are not entitled to an injunction herein.

V

That said court erred in refusing to expressly hold and conclude as a matter of law based upon its findings of fact and the evidence that the order of the Corporation Commission was null and void as to each of said complainants as depriving them, and each of them, of their property without due process of law, and denying them, and each of them, the equal protection of the laws as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States, and as impairing the obligation of the contract existing between the complainants Oklahoma Gas and Electric Company and the Oklahoma Natural Gas Corporation, as successor of the Oklahoma Natural Gas Company, contrary to and in violation of the provisions of Section 10 of Article I of said Constitution.

In support of the foregoing points, appellants, and each of them, hereby designate the following parts of the record to be printed which they think necessary for a proper determination of this appeal, and hereby request the Clerk of this Honorable Court to have the same printed under his supervision:

[fol. 222] First. Citation and Service.

Second. Bill of Complaint.

Third. Temporary Restraining Order.

Fourth. Motion of Wilson & Co., Inc., objecting to jurisdiction.

Fifth. Answer of Oklahoma Packing Company.

Sixth. Answer of Corporation Commission, et al., adopting answer of Oklahoma Packing Company.

Seventh. Opinion on application for Temporary Injunction and motion to dismiss bill.

Eighth. Order denying application for Temporary Injunction.

Ninth. Order overruling motion to dismiss bill.

Tenth. Answer of Wilson & Co. adopting answer of Oklahoma Packing Company.

Eleventh. Supplemental answer of Wilson & Co. Inc.

Twelffh. Condensed statement of evidence as approved by the court, including Exhibits "2", "3" and "4".

Thirteenth. Findings of Fact and Conclusions of Law on final hearing.

[fol. 223] Fourteenth. Opinion of the Court on Final Hearing.

Fifteenth. Petition for Rehearing.

Sixteenth. Order overruling Petition for Rehearing.

Seventeenth. Decree dismissing bill of complaint.

Eighteenth. Petition for appeal and prayer for reversal.

Nineteenth. Order Allowing Appeal.

Twentieth. All orders extending time for lodgment of transcript in this court.

Twenty-first. Assignments of Error.

Twenty-second. Bond on appeal.

Twenty-third. Designation of Points intended to be Relied Upon.

Robert M. Rainey, Streeter B. Flynn, I. J. Underwood, Attorneys for Appellants.

[fols. 224 & 225] Acknowledgment of Service

The undersigned, counsel for appellees, hereby acknowledge service of appellants' Designation of Points upon which they will rely in the Supreme Court of the United States and of portions of the record to be printed.

Dated this 6th day of March, 1934.

W. R. Brown, Bennett & Bennett, Attorneys for Oklahoma Packing Company, Formerly Wilson & Co., Inc., of Oklahoma, an Oklahoma Corporation; Wilson & Co., Inc., of Oklahoma, a Delaware Corporation. J. Berry King, Atty. General State of Oklahoma, by Fred Hansen, Asst. Atty. General of said state, Attorneys for The Corporation Commission of the State of Oklahoma, Paul Walker, Chairman; C. C. Childers and E. R. Hughes, Members. J. Berry King, Attorney General of the State of Oklahoma, by Fred Hansen, Asst. Atty. General for State of Oklahoma.

[fol. 226] [File endorsement omitted.]

Endorsed on cover: File No. 38,435. W. Oklahoma, D. C. U. S. Term No. 832. Oklahoma Gas and Electric Company, Oklahoma Natural Gas Company, W. T. Phillips, Jr., et al., etc., appellants, vs. Oklahoma Packing Company, formerly Wilson & Co., Inc., of Oklahoma; Wilson & Co., Inc., of Oklahoma, et al. Filed March 2, 1934. File No. 832, O. T., 1933.